TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 81

NATIONAL LABOR RELATIONS BOARD,
PETITIONER

vs.

UNITED STEELWORKERS OF AMERICA, CIO,
and
NUTONE, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petition for Certiorari
Filed February 20, 1957
Certiorari Granted April 1, 1957

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JOINT APPENDIX

1 IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,754

UNITED STEELWORKERS OF AMERICA, CIO, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

Petition to Review and Modify an Order of the National Labor Relations Board—Filed June 23, 1955

Pursuant to the National Labor Relations Act, as amended, 61 Stat. 316, 29 U.S.C. Sec. 141 et seq., (hereinafter called the Act), the United Steelworkers of America, CIO, (hereinafter referred to as the petitioner or the Union) respectfully petitions this Honorable Court to review and modify, as hereinafter set forth, an Order of the National Labor Relations Board, dated June 13, 1955, by which petitioner is aggrieved. The proceeding resulting in said Order is known upon the records of the Board as "IN THE MATTER OF NUTONE, INCORPORATED AND UNITED STEELWORKERS OF AMERICA, CIO, Case No. 9-CA-704."

In support of this petition, and in accordance with Rule 38 of the rules of this Court, the petitioner states as follows:

* * * * * * *

III

The Grounds on Which Relief is Sought

The petitioner alleges that the Board's decision and order herein is erroneous, contrary to law, arbitrary, and an abuse of the Board's power and discretion, insofar as the said Decision and Order:

(1) failed to find that the Company engaged in interference, restraint and coercion within the meaning of Section 8(a)(2) and (1) of the Act by enforcing its no-
2 solicitation, no-posting and no-distribution rule

against the Union while simultaneously itself engaging in anti-union posting, solicitation and distribution of literature;

(2) failed to find that the Company illegally dominated the Employee Committee and failed to order the Company to disestablish said labor organization;

(3) failed to order the reinstatement of Virgie Marshall and failed to order the Company to make the said Virgie Marshall whole for any loss of pay she may have suffered from and after August 18, 1953, by reason of the discrimination against her.

IV

The Relief Prayed

The petitioner prays:

(1) That this Honorable Court cause notice of the filing of this petition to be served upon respondent N. L. R. B.;

(2) That respondent N. L. R. B. be required to certify to this Court a transcript of the entire record in this proceeding;

(3) That the decision and order of the Board be reviewed and modified insofar as it is erroneous, contrary to law, arbitrary, and an abuse of the Board's power and discretion, as set forth in this petition;

(4) That the petitioner have such other and further relief as this Court may deem just and proper.

Respectfully submitted,

UNITED STEELWORKERS OF AMERICA, CIO
By DAVID E. FELLER
ARTHUR J. GOLDBERG,
General Counsel

DAVID E. FELLER
ELLIOT BREDHOFF
Associates General Counsel
1001 Connecticut Ave., N.W.
Washington 6, D. C.

Date: June 22, 1955.

3 IN UNITED STATES COURT OF APPEALS

No. 12,812

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

NUTONE, INCORPORATED, *Respondent*

Petition for Enforcement of an Order of the National Labor Relations Board—Filed July 28, 1955

To the Honorable, the Judges of the United States Court of Appeals for the District of Columbia Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act as amended (61 Stat. 136, 29 U.S.C., Secs. 141, *et seq.*), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, Nutone, Incorporated, Cincinnati, Ohio, its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "Nutone, Incorporated and United Steelworkers of America, CIO, Case No. 9-CA-704.

In support of this petition the Board respectively shows:

1. Upon due proceedings had before the Board in said matter, the Board on June 13, 1955 duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, its Officers, agents, successors, and assigns. The Board's order dismissed certain allegations contained in the complaint and withheld certain relief sought in the complaint. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's Counsel.

2. Pursuant to Section 10(f) of the Act, United Steelworkers of America, CIO, Charging Party in the proceedings before the Board, filed with this Court its petition to review that portion of the Board's order which dismissed certain allegations contained in the complaint and withheld certain relief sought in the complaint.

4 3. In accordance with said petition to review, the Board, on July 27, 1955, filed with this Court a transcript of the entire record of the proceedings before the Board upon which the said order was entered, giving this Court jurisdiction under Section 10(f) of the Act. This transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the order of the Board. This same transcript also constitutes the certified record in the instant enforcement proceeding.

4. Although Respondent herein is a New York corporation engaged in business in the State of Ohio, this Court has jurisdiction of this petition for enforcement by virtue of its exclusive jurisdiction over the entire proceeding upon the filing of the certified record in connection with the petition to review.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition to be served upon Respondent, and that this Court take jurisdiction of the entire proceeding and of all the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript filed in connection with the petition to review in No. 12,754, and upon the Order made thereupon, a decree enforcing those sections of the Board's said Order which relate specifically to the Respondent herein, and requiring Respondent, its officers, agents, successors and assigns to comply therewith.

(Signed) MARCEL MALLET PREVOST
Assistant
General Counsel

NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.,
this 28th day of July, 1955.

5 IN UNITED STATES COURT OF APPEALS

Nos. 12,754, 12,812

Prehearing Conference Stipulation—Filed August 25, 1955

Pursuant to Rule 38(k) of the Rules of this Court, the parties, subject to the approval of the Court, hereby stipulate and agree as follows with respect to the issues and the procedure and dates for the filing of the briefs and joint appendix herein.

6 I

ISSUES

These proceedings, initiated by the filing of charges by the United Steelworkers of America, began with a complaint issued by the General Counsel of the National Labor Relations Board alleging *inter alia,* that NuTone, Inc. had engaged in unfair labor practices prescribed by Section 8(a)(1), (2), and (3) of the National Labor Relations Act, as amended (29 U.S.C.A. 158(a)(1)(2) and (3)) by discriminating against three employees, by engaging in conduct which interfered with, restrained and coerced its employees in the exercise of the rights guaranteed them by the Act, and by interfering with, lending support, and assisting a labor organization—the NuTone Employee-Company Relations Committee. The Trial Examiner, after hearing, found that NuTone had engaged in the foregoing unfair labor practices and recommended a cease and desist order. Affirmatively, he recommended the withdrawal of recognition from the assisted union, reinstatement of two of the discriminatees with back pay (Della and Charlottie Puckett), and limited back pay to a third (Virgie Marshall) who, he concluded, had thereafter lost her right to reinstatement by reason of her misconduct. He recommended, on the other hand, that the complaint be dismissed with respect to other allegations of unfair labor practices, including an allegation that NuTone had dominated the NuTone Employee-Company Relations Committee within the meaning of Section 8(a)(2) and (1) of the Act.

The Board in its decision and order issued on June 13, 1955, adopted the Trial Examiner's conclusions and recom-

mendations except insofar as he found that NuTone had violated Section 8(a)(2) and (1) of the Act by distributing non-coercive, anti-union literature in the plant prior to a Board-conducted election while enforcing as to the employees its otherwise valid rule against distribution of union literature on company premises.

On June 22, 1955, the United Steelworkers of America filed in this court a petition to review (Case No. 12,754) the Board's failure: (1) to find that NuTone violated the Act by discriminatorily applying its no-distribution rule, (2) to find that NuTone illegally dominated the NuTone Employee-Company Relations Committee and to order its disestablishment, and (3) to order reinstatement and full back pay to Virgie Marshall.

On July 28, 1954, the National Labor Relations Board filed in this Court a petition for enforcement (Case No. 12,812), of its order against NuTone, Inc., and moved for consolidation of both proceedings. On August 8, This Court issued an order consolidating the proceedings "for the purpose of filing briefs, of filing a single joint appendix and for hearing."

A motion of NuTone, Inc. to intervene in No. 12,754, and a motion of the Steelworkers to consolidate the proceedings for all purposes or, in the alternative, to intervene in No. 12,812 are now pending, unopposed by any party, before this Court.

The issues presented, in Case No. 12,812, are as follows:

1. Whether substantial evidence on the record considered as a whole supports the Board's finding that NuTone violated Section 8(a)(1) of the Act by interrogating employees concerning union activity in the plant, by soliciting reports on such activity and by promising benefits for so reporting, and by implying that an employee's lay-off was due to her union activity.

2. Whether substantial evidence on the record considered as a whole supports the Board's findings that NuTone's failure to recall Virgie Marshall, Charlottie Puckett, and Della Puckett after an economic lay-off was because of their union membership and activity.

3. Whether substantial evidence on the record considered as a whole supports the Board's finding that Charlottie

Puckett, while distributing union literature outside the plant gates, did not use such offensive language as to render her unsuitable for reinstatement.

The issues presented, in Case No. 12,754, are as follows:

4. Whether the Board may, under the circumstances of this case, deny the normal remedy of reinstatement and full back pay to Virgie Marshall on the ground that she used the offensive language disclosed by the record to other employees, while distributing union literature outside the plant gates after NuTone failed to recall her.

5. Whether an employer commits an unfair labor practice if, during a pre-election period, it enforces an otherwise valid rule against employee distribution of union literature in the plant, while, during that same period, itself distributing non-coercive anti-union literature within the plant in a context of other unfair labor practices, committed prior to the election period and thereafter.

Respondent, Nutone, Inc., in No. 12,812, asserting that NuTone Employee-Company Relations Committee is defunct, will not contest the validity of the findings or order relating to unlawful interference with the formation of, and illegal assistance and support the NuTone Employee-Company Relations Committee, which unfair practices occurred after the election. Petitioner Steelworkers in No. 12,754 for the same reason will abandon its contention that the Board erred in failing to find unlawful domination of the NuTone Employee-Company Relations Committee and in failing to order its disestablishment.

II

PROCEDURE WITH RESPECT TO FILING OF BRIEFS AND JOINT APPENDIX TO BRIEFS

For the purpose of facilitating the work of the Court and the parties, the parties agree that their briefs and the joint appendix thereto will be served and filed in accordance with the procedures hereinafter set forth:

1. NuTone and the Steelworkers will file their printed briefs on or before October 3, 1955. The Board will

file its printed brief on or before November 3, 1955. Reply briefs, if any, by NuTone and the Steelworkers will be filed on or before November 25, 1955. Should adherence to the aforesaid dates become impractical, the parties will, subject to the approval of this Court agree upon a revised set of dates.

2. In their respective briefs the parties will make their citations to the record by citation to the pages of the certified record as indicated in the Index to Certified Record, heretofore filed herein, instead of to pages in the printed appendix. Exhibits of the General Counsel and NuTone will be refered to, respectively, as "G.C. Sx." and "Co. Ex."

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3. The parties will, on or before November 25, 1955, enter into a stipulation as to the portions of the record to be printed in the joint appendix. Failing agreement on such a stipulation, NuTone and the Steelworkers will, on or before November 25, 1955, each serve upon the other parties designations of the parts of the record which they desire to be printed in the joint appendix. Within 5 days after the receipt of such designations by NuTone and the Steelworkers, the Board will serve upon NuTone and the Steelworkers a designation of the parts of the record which it desires to be printed in the joint appendix. Within two days thereafter, NuTone and the Steelworkers will designate any additional portions of the record which they desire printed. Within 25 days thereafter, the joint appendix, to be printed by a printer mutually agreed upon, will be filed. Costs of printing, unless otherwise agreed to by stipulation, will be borne by each party in accordance with the portions of the record designated by such party.

4. In the joint appendix each page number of the record certified to this Court shall be printed in boldfaced type, centered on a line by itself, at the appropriate place on the printed page, and the usual numerical pagination of the joint appendix shall be printed in modern (i.e., light-face) type at the appropriate right or left hand side of the top of each printed joint appendix page. Omissions shall be indicated by asterisks.

5. It is further agreed and stipulated that any party and the Court, at and following the hearing in the case, may refer to any portion of the original transcript of record herein which has not been printed to the same extent and effect as if such portions of the transcript had been printed; it being understood that any portions of the record thus referred to will be printed in a supplemental joint appendix if the Court directs the same to be printed.

(Signed) THOMAS E. SHROYER
Counsel for NuTone, Incorporated

10 (Signed) DAVID E. FELLER
Counsel for United Steelworkers of America, CIO

(Signed) MARCEL MALLET-PREVOST
Counsel for National Labor Relations Board

August 25, 1955

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11 IN UNITED STATES COURT OF APPEALS

No. 12,812

Answer to Petition for Enforcement of an Order of the National Labor Relations Board—Filed September 12, 1955

Now comes the respondent, NuTone, Incorporated, by its attorneys and for its answer to the Petition for Enforcement filed in the above entitled matter states as follows:

Respondent avers, with respect to the findings of fact, conclusions of law and Order made and issued on June 13, 1955, that all of them are contrary to law and fact
12 and that they are not supported by substantial evidence, the law or facts, except:

(1) Those portions of the Order which dismissed certain allegations contained in the complaint and which withheld certain relief sought in the complaint; and

(2) Those portions of the Order finding unlawful interference with the formation of, and illegal assistance

and support to the NuTone Employee-Company Relations Committee, and the remedies therefor.

Respondent admits all other allegations of said Petition.

WHEREFORE, it is respectfully prayed that said Order of the National Labor Relations Board issued on June 13, 1955 be set aside and declared for naught except as specified above.

(Signed) THOMAS E. SHROYER
Commonwealth Building
Washington, D. C.

(Signed) CHARLES A. ATWOOD
Union Central Building
Cincinnati, Ohio

Of Counsel:
POOLE, SHROYER & DENBO

Of Counsel:
FROST & JACOBS

Dated September 1, 1955
Washington, D. C.

[Certificate of Service]

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18 BEFORE NATIONAL LABOR RELATIONS BOARD

IR-491
Cincinnati, Ohio

DIVISION OF TRIAL EXAMINERS, WASHINGTON, D. C.

Case No. 9-CA-704

NUTONE, INCORPORATED

and

UNITED STEELWORKERS OF AMERICA, CIO

Messrs. E. Don Wilson and *Harry D. Campodonico* for the General Counsel.

Messrs. Malcolm F. Halliday, Charles A Atwood, and *George R. Cassidy* (Frost and Jacobs), of Cincinnati, Ohio, for Respondent.

Mr. Chester A. Morgan, of Cincinnati, Ohio, for the Union.

Before: George A. Downing, Trial Examiner.

Intermediate Report and Recommended Order of Trial Examiner—Filed July 30, 1954

Statement of the Case

This proceeding, brought under Section 10(b) of the National Labor Relations Act as amended (61 Stat. 136), was heard in Cincinnati, Ohio, on April 26 and May 3-7, inclusive, pursuant to due notice. The complaint, issued on February 11, 1954, by the General Counsel of the National Labor Relations Board,[1] and based on charges duly filed and served, alleged in substance that Respondent had engaged in unfair labor practices proscribed by Sections 8 (a) (1), (2), and (3) of the Act by (a) discriminatorily discharging Virgie Marshall, Della Puckett, and Charlottie Puckett on June 9, and thereafter refusing to
19 reinstate them, and discriminatorily discharging John David Mills on July 29; (b) assisting, supporting, dominating, and interfering with the organization, administration, and operation of the NuTone Employee-Company Relations Committee (herein called the Employee Committee and the Permanent committee) on and after August 9; and (2) engaging in various specified acts of interference, restraint, and coercion on and after May 1.

Respondent answered, denying generally the alleged unfair labor practices. Among other things, it denied that the Employee Committee was a labor organization, admitted that Mills was discharged, denied that Marshall and the two Pucketts were discharged, but admitted that they had not been reinstated.

All parties were represented by counsel or other representatives, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally, and to file briefs and proposed findings of fact and conclusions of law. The General Counsel made an oral argument. Respondent has filed a brief.

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[1] The General Counsel and his representatives at the hearing are referred to herein as the General Counsel and the National Labor Relations Board as the Board. NuTone, Incorporated, is referred to as Respondent and as NuTone, and the charging Union above as the Union.

The summary of the pleadings below includes amendments made at the hearing. All events occurred in 1953, unless otherwise stated.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. The business of Respondent

Respondent, a New York corporation, has its principal office and place of business and plant at Cincinnati, where it is engaged in the manufacture of door chimes, ventilating fans, electric heaters and other electrical devices. Its annual sales and shipments to extrastate points exceed $500,000. It is therefore engaged in commerce within the meaning of the Act.

II. The labor organizations involved

The Union is a labor organization which admits to membership employees of Respondent.

It is also found that the Employee Committee is a labor organization. See Section III, D, *infra.*

III. The unfair labor practices

A. *Introduction; synopsis of main events and issues*

Respondent employed normally some 700 employees in some 25 different departments. Its supervisors, to the extent that they are identified by the record, were J. Ralph Corbett, president, Henry Mann, director of industrial relations, Robert Schaeffer, Ken Yancey, Howard Fisher, Stella Millichamp, John Humig, Bernie Gray, and Myron Theetge.

Although the Union had made some preliminary efforts toward organizing NuTone's employees in April and May, it did not show its hand openly until after a layoff on June 9, of nine employees, including Virgie Marshall and the Pucketts, who had joined the Union shortly before. The first Union leaflet was distributed June 11. A representation petition was filed on July 16, and the election, held on August 19, was lost by the Union.

Respondent began recalling the laid-off employees on June 23, but did not recall Marshall or the Pucketts, for the reason (asserted at the hearing) that they

had created a scene and had used abusive language at the time of the layoff. Respondent discharged John David Mills on July 29, for the asserted reason that he had falsified an entry on his production card.

The General Counsel offered testimony concerning various alleged incidents of interference, restraint, and coercion, such as interrogation, solicitation of employees to report on Union activities, and the discriminatory application of no-solicitation and no-distribution rules.

Marshall and the Pucketts participated actively in the election compaign, roughly from August 1 to 19, distributing literature to employees outside the plant. Witnesses for Respondent attributed to Marshall, and to a lesser extent to Charlottie Puckett, vulgar and obscene statements, cursing, and name-calling.

21 The Union was actively and openly opposed during the election campaign by a group of employees who first called themselves "NuToners for NuTone" and later the "Loyalty Group". The leaders of that group led a movement, after the election, to form first a temporary organization, known as the Temporary Committee, and then a permanent organization known as the NuTone Employee-Company Relations Committee, or the Employee Committee. The General Counsel offered evidence of various acts of assistance and support by the Company to those committees in September and since.

The main issues under the evidence are whether the Mills discharge and the failure to recall Marshall and the Pucketts were motivated by their Union activities, and whether, if discrimination be found, the three latter employees engaged later in such serious acts of misconduct as to warrant denial, as to them, of the usual remedy of reinstatement. Issues of lesser importance concern interference, restraint, and coercion, the evidence on which is in part disputed, and support and assistance to the Employee Committee, on which the evidence is not greatly in dispute, though the question of the Committee's status as a labor organization is in issue.

B. *Interference, restraint, and coercion*

1. Interrogation and solicitation to report on Union activities

Thelma Collier testified, without denial, that in mid-May she had a conversation with Robert Schaeffer concerning the Union, during which Schaeffer inquired whether Collier had seen any girls signing Union cards and told her that if she did, she should give him their names. When Collier countered, "Do you want me scalped?" Schaeffer replied, "Don't worry about the girls in here. Mr. Corbett will take good care of you. You will never be let go."

Dan Deaton testified, also without denial, that about a month before the election, his foreman, Bernie Gray, asked him, "if you see any of the boys passing out
22 Union cards or anything, will you come and tell me."

Hattie Laymons testified, again without denial, that on or about June 12, Gray talked with her about Marshall's layoff, commenting in part that Marshall "should have known better than to get messed up in that damn Union."

It is concluded and found that the interrogation by Schaeffer and Gray of Collier and Deaton concerning the latters' knowledge of Union activities, the solicitation to report on those activities, and Schaeffers' promises of benefit in that regard, constituted interference, restraint, and coercion within the meaning of Section 8(a) (1) of the Act. Cf. *Coca-Cola Bottling Co. of Louisville*, 108 NLRB No. 81, 34 LRRM 1040, 1042. Gray's comment to Laymons was similarly violative of the Act, since it plainly implied that Marshall's layoff was due to her Union activities.

Laymons also gave testimony about a coercive conversation with Stella Millichamp, which Millichamp denied. Laymons testified that Millichamp inquired about a Union badge she was wearing, told her that she should be ashamed, and said, "Hattie . . . why don't you get some sense, . . . You know better than that . . . and get out of that mess . . . If the Union gets in here . . . you know that there's going to be a hell of a mess . . . Your bonus can be taken away and there is nothing you can do about it." Lay-

mons' version of the conversation cannot be accepted for the following reasons:

When called originally, Laymons testified that she had "just one" conversation with Millichamp concerning the Union. Called in rebuttal after Millichamp had testified that the conversation had its roots in an earlier incident, Laymons admitted the earlier conversation with Millichamp concerning the Union, but gave a version of that one one also which was of coercive content. Though neither witness was corroborated directly, Millichamp's
23 testimony received indirect corroboration on one point from the General Counsel's witness, Virgie Marshall. Furthermore, the evidence as a whole showed that Laymons had a decided tendency to emotionalism and that she was emotionally upset on the two occasions.

Thus, Millichamp testified that the first conversation had grown out of an incident involving the distribution of Union literature by Laymons' son, Bob, who was not an employee of the Company. Laymons came to her crying the next morning in the dressing room and reported that Marshall had given her son some Union literature to pass out; that she had "cussed out" Marshall at the time; that she wanted no part of it; and that she asked Millichamp if she would be laid off. Millichamp assured Laymons that the Company did not lay off employees for anything like that.

Neither Millichamp nor Laymons fixed the time of that incident, but Marshall's testimony fixed the distribution of the literature as on the afternoon of June 11. Marshall's testimony also showed that Laymons had been greatly upset when she discovered that her son was assisting in the distribution of Union literature. Thus, Marshall testified that when Laymons came out of the plant that afternoon and saw what her son was doing, she shouted across the street to him, "Bob, get over here and get in the car . . . what are you doing out here, trying to get me fired? . . . You know I have to work."

As to the second conversation (which had formed the subject matter of Laymons' testimony in chief), Millichamp testified that, seeing Laymons wearing a button, she asked what it was, and that Laymons informed her it was a Union button. Then, referring to Laymons' earlier

disclaimer of interest in the Union, Millichamp asked, "Why did you lie to me?"

24 For the reasons given above, Millichamp's testimony, which was indirectly corroborated in part, and which, as a whole appeared more objective and reliable than Laymons', is credited. It affords no substantial basis for a finding of unfair labor practices. Thus, in the initial incident, she merely sought to calm Laymons in her emotional appeals for assurances against discharge. In the latter incident, Millichamp's inquiry, on learning that what Laymons was wearing was a Union button, was an understandable impulsive reaction to Laymons' earlier emphatic disavowal of interest in the Union; it cannot be found violative of the Act, under all the circumstances. Cf. *United States Gypsum Co.*, 93 NLRB 966, 968.

Estel Frost testified that on numerous occasions during the two weeks before the election Alma Patton had pulled CIO buttons from his clothing and had pinned or attached to him NuToner badges or tickets which were being worn by some employees as a symbol of adherence to the so-called "Loyalty Group." Frost admitted he made no attempt to pull away or to resist, that he was on good terms with Patton, and that she was acting in humorous fashion. Patton flatly denied Frost's testimony. The General Counsel offered no corroboration of Frost, though Frost claimed the incidents had occurred in the presence of other employees.

Frost's testimony cannot be credited, in the absence of corroboration, over Patton's denials. His testimony here, as in the washroom incident (summarized with other evidence concerning Mills' discharge, Section C, 2, *infra*), bordered on the incredible; at best it would be consistent only with the view that Patton was acting wholly in fun.[2]

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[2] Aside from the foregoing, it is questionable whether the General Counsel established, by a preponderance of the evidence, that Patton was in fact a supervisor. The evidence suggests strongly that she was not. Thus, there were only 12 employees in the department at the time, under Foreman Howard Fisher. Though Patton, as group leader, had some authority over the other employees, the evidence as a whole indicated that the authority she exercised was merely of a routine nature and did not require the exercise of independent judgment. Indeed, the General Counsel's evidence furnished significant support for the view that to the extent that she gave orders, she was serving only

25 Mills testified that Humig once asked him whether he thought CIO would get into NuTone and that he replied affirmatively. Though Humig was not examined specifically about, and did not directly deny, that testimony, he testified on cross-examination that he had had only a single conversation with Mills (or any other employee) concerning the CIO's attempts to organize, and that Mills had sought permission from him to speak with Corbett about organizing for CIO. It is found, therefore, that Humig in fact made the inquiry during the discussion which Mills had initiated, and that, under the circumstances, Humig's casual inquiry cannot be found coercive either in intent or effect.

2. Discriminatory application of rules

Prior to, during, and after the Union's organizing campaign the Company had in effect rules which prohibited the posting of signs of any kind on Company property, solicitation of any kind on company time, and the distribution of literature on Company property, including the parking lot on which many of the employees parked their cars. Despite those rules, Mann admitted that the Company itself regularly posted signs throughout the plant, on bulletin boards and walls (1 or more signs in each of 25 to 30 departments) and that it distributed literature for its own purposes and for charitable causes or drives such as the Cancer Fund, the Community Chest, and the Heart Foundation.

26 After the election compaign got under way around the first of August, the Company emphasized its rules by issuing and *posting* written notices, dated August 5, 10, and 12, respectively, as follows:

RULE ABOUT USING COMPANY PROPERTY

It must be understood throughout the entire plant that the Company does not permit posting of signs—of any kind—on company property. I would appre-

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as a conduit for messages from Fisher. Thus, Charlottie Puckett testified that on the afternoon of the layoff, Patton brought the message, "Fisher said for you girls to have your timecards made out by 4:15." Patton's status thus closely resembled that of forelady Flossie Howard, who, in *Poultry Enterprises, Inc.*, 106 NLRB No. 15, was held not to be a supervisor.

ciate it if all employees—regardless of how they feel on the union issue—would avoid attaching signs to company property. Wherever we find them—we will be compelled to destroy such signs.

To: All Foremen

SUBJECT: Rule about Soliciting And Campaigning on Company Time.

It must be understood by all employees that the company does not permit soliciting and campaigning on company time. This applies to both sides of the union issue. Such activity must be confined to the employees' own time.

To: All foremen

SUBJECT: Rule about passing out literature on company property.

This is a warning to all employees—whether they are for or against the union—that the company does not permit employees to pass out handbills or other literature on company property. People who engage in such activities must stay outside of the Company property line which is the inner edge of the sidewalk.

Will you please post this notice in your department?

The evidence establishes that, prior to the election, those rules were enforced uniformly as between the Union and the "Loyalty Group," but that the Company itself violated them repeatedly by distributing antiunion leaflets, bulletins, and letters in the plant. Beginning promptly
27 after the Union's first distribution on June 11, and continuing until the eve of the election on August 18, the Company distributed to the employees in the plant eight separate pieces of antiunion propaganda.[3] Thus, though professing neutrality as between prounion and antiunion employees, the Company itself entered the anti-

[3] The General Counsel pointed to no specific statement in that series which he claimed to constitute interference, restraint, or coercion.

union lists and actively compaigned for the Union's defeat on a field to which it denied admittance to the Union. The discriminatory application of its rules was emphasized by the fact that one piece of the Company's campaign material was distributed on the very date on which the Company posted its third rule, quoted above, which prohibited employees from passing out literature on Company property.[4]

Following the election and the Union's defeat, the Company even more openly demonstrated the discriminatory application of its rules. The relevant evidence, summarized in detail under Section D, *infra,* need not be set forth here in full. Suffice it to say that it shows that Respondent ignored its rules completely in permitting—indeed, in assisting—the Temporary Committee (successor to the "Loyalty Group") and the permanent Employee Committee, to distribute literature, to solicit and campaign, and to conduct an election on Company time and property.

28 Respondent's rules were not, of course, so broad that, in and of themselves, they constituted unwarranted and unlawful interference with the employees' undisputed rights of self-organization,[5] nor does the com-

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[4] The Company also mailed to the employees between June 12 and the election some ten other pieces of campaign material. The General Counsel did not contend that such action constituted a discriminatory application of the Company's rules and did not claim that any portion of the contents of the matter so distributed to be coercive except for one which contained a paragraph appealing to the young employees and which concluded, "Don't let the Union take away your future opportunities at NuTone. Don't get mixed up in strikes." Though arguing that the statement constituted a threat *by the Company* to take away job opportunities if the Union came in, the General Counsel stated he would submit authority to support his position. However, he filed no brief or memorandum of authorities, and the statement cannot be found coercive in the context in which it appeared as it does not establish the inference which the General Counsel would draw from it.

[5] Cf. *Seamprufe, Inc.*, 109 NLRB No. 2.

Prohibiting the distribution of literature on the parking lot did not, under the circumstances shown by the record, constitute an unreasonable impediment to communication, cf. *Monarch Machine Tool Co.*, 102 NLRB 1242, enf'd. 210 F 2d 183, 186 (CA 6), cert. den. May 17, 1954, 34 LRRM 2143, since distribution was as effectively made from the sidewalk, immediately adjacent, as on the lot itself. Furthermore, the rule was applied without discrimination of any kind insofar as the parking lot was concerned.

plaint so charge. What is under question is Respondent's conduct in applying its rules discriminatorily so as to interfere with those rights.

It is immaterial in that connection that before the election the Company enforced its rules uniformly as between the Union and the Loyalty Group, nor is it necessary to rest a finding of discrimination only on such exceptions as were reflected by the Chest and Fund drives. For, as has been found, the Company broke its own rules openly and flagrantly by campaigning against the Union in the normal arena, and the most effective one for reaching the employees, cf. *Bonwit Teller, Inc.* v. *N.L.R.B.*, 197 F 2d 640, 645 (CA 2), while simultaneously denying access to it by the Union. Emphatic evidence of its discriminatory intent was furnished, after the Union defeat in the election, by Respondent's complete ignoring of the rules in assisting the organization of the Employee Committee.

It is, therefore, concluded and found that by discriminatorily applying its no-posting, no-solicitation, and no-distribution rules for the purpose of hindering and combating the Union's organization campaign, Respondent engaged in interference, restraint, and coercion within the meaning of Section 8(a) (2) and (1) of the Act.

29 C. *Discrimination*

1. The layoff; the failure to recall Marshall and the Pucketts

Due to a drop in orders and an engineering change, Respondent closed down 2 of 3 lines in its Chime B department at the end of the work day on June 9. The 9 employees on the 2 lines were laid off, but 3 others in the department, who were engaged in other work, were retained. Included in the layoff were Virgie Marshall and the Pucketts (herein called Della and Charlottie, respectively), who had shortly before joined the Union. There is no evidence however, that Respondent was aware of their union membership at the time, or that

Respondent's action constituted a discharge, or that the layoff was not made for the reasons which Respondent assigned.[6] What is in issue under the evidence is whether Respondent's failure to recall the 3 girls on or around June 23 (when other employees with less seniority were recalled) was motivated by knowledge, acquired shortly after the layoff, of their Union membership and their participation in the Union's organizing campaign, or whether, as Respondent contends, its decision not to recall them was because of a scene which they created at the time of the layoff.

The evidence surrounding the layoff itself is not in significant dispute, except as to the use by Marshall and Charlottie of profanity. The incident occurred in two segments, one in the department when Fisher announced the layoff, and one in Mann's office where the 3 girls went later. Fisher's announcement was made shortly before quitting time, and according to Respondent's witnesses, it provoked a heated reaction from Marshall, who made a comment in their hearing to the general effect that she knew when she was transferred into the department that that g— d— Fisher, or that s— o— b— Fisher, would get rid of her, or lay her off. Marshall denied making those statements, and the Pucketts testified that they did not hear her do so. However, the evidence as a whole, including that which is elsewhere summarized in this report, establishes that Marshall, when aroused, was addicted to the use of profane and indecent language. Marshall admitted that she was angry at the time and that she suggested to some of the girls that they go to the office about the layoff. Under all the circumstances, her denials are not credited.

Marshall and the Pucketts went immediately to Mann's office, and there, according to Respondent's witnesses, Marshall continued her use of profanity and abusive lan-

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[6] Gray's remark to Laymons' (Section B, 1, supra), which implied a casual connection between Marshall's layoff and her Union activities, will not support a finding that the layoff was discriminatorily motivated, since Gray was not in or over the department involved, had no connection with the layoff, and was, so far as the record shows, without knowledge either of the reasons for the layoff or the basis of selection of the employees.

guage in a heated conversation.[7] The evidence is not in dispute that Marshall protested vigorously their selection for layoff and that she used abusive language in doing so. The conflict concerns only the extent to which she used such language, whether she cursed, and the exact words she employed. Briefly, Marshall and the Pucketts admitted only that Marshall had at one point referred to Corbett as "that old bastard," whereas Mann testified that she applied that term and s— o— b— to both Corbett and Fisher, and that she also said the layoff was a g— d— dirty trick to beat her out of her vacation pay.

Mann's testimony received corroboration from Carolyn Essert, who, passing the office, heard one of Marshall's statements within, and from Irma Flannelly and Genevieve Bolton, who heard Marshall cursing as she left the
31 office. Their testimony, which is mutually corroborative, is credited over Marshall's denials; it persuades the undersigned that Mann's version of Marshall's language is to be credited, particularly in view of the partial admissions by Marshall and the Pucketts.

Mann also attributed to Charlottie statements substantially the same as those which Marshall had made, but that testimony was not corroborated by any witness, and Marshall and the Pucketts denied it. Their denials are credited.

Respondent contended that its decision not to recall the three girls, though made subsequently, was based on that "scene" and on the abusive language used on the occasion. Mann testified that the decision was reached the next morning. However, he identified termination forms which had originally contained a notation in each case that the employee would be reemployed, and he admitted that on *June 12*, he had changed each notation to one that the employee would not be reemployed, for the reason, noted by him:

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[7] There was no evidence that Della Puckett said or did anything untoward on the occasion. Indeed, Mann admitted that Della was more or less an innocent or silent participant. Though he testified that Charlottie also used abusive language, that testimony was overborne by that of the other witnesses, as hereinafter found.

Created a scene in personnel office at 4:30 on 6-9-53. Used abusive language about Mr. Corbett and the Company.

Though admitting that that entry was the only record of the decision not to recall, Mann endeavored to explain the date as being simply the date of entry, testifying that the delay was due to the fact that he was behind on his record-keeping operations. However, Mann testified he could not recall that he had in fact made the entry on June 12, but only assumed that he had because the notation bore that date.

The Examiner is convinced from the entire evidence in the case (1) that the decision not to reemploy was reached in no case prior to June 12, and (2) that in any event it was motivated, not by the alleged scene, but by Respondent's knowledge that the Union had begun an organizational campaign and that the three girls were actively supporting it.

32 The evidence is conclusive on the score of knowledge. Thus, on the night of June 9, Marshall (in company with Ray Sowder, union organizer) solicited Rose DeAngelis to join the Union, and informed DeAngelis that she and the Pucketts had signed Union cards. DeAngelis promptly reported the conversation to Millichamp at the plant the next morning. On the afternoon of June 11, the Union made its first distribution of literature at the plant. Though its handbill made no direct reference to the layoff or to Marshall and the Pucketts, Marshall was present at the time and was "cussed out" by Hattie Laymons for involving her son in the distribution. As recounted under Section B, 1., *supra*. Laymons made a full report to Millichamp the next morning. As also recounted under that section, Bernie Gray commented to Laymons on or about June 12, that Marshall "should have known better than to get messed up in that damn Union."

Under the foregoing circumstances it was of crucial importance to the Company, if it had in fact made an earlier decision not to recall the 3 girls, that a correct record be made of that fact. It is incredible that a witness of Mann's intelligence would have failed to enter the earlier date, if it was in fact the *correct one*, since it would have lent support to the Company's position in event of

future charges or other attempts by the Union to capitalize on the layoff or the failure to recall the girls.

Subsequent events emphatically support the conclusions both that the decision was made belatedly and that it was unrelated to the layoff incident. Thus, despite several subsequent contacts between Respondent and the 3 girls, it not only did not inform them that they were no longer employees, or would not be reemployed, but *informed them they would be recalled.* On the first occasion, some 3 or 4 days after the layoff (and subsequent to June 12), Della called the office and talked with Yancey, in Corbett's absence. Yancey assured her that she would
33 be recalled soon, and on her inquiry, stated that Marshall and Charlottie would also probably be called back. No denial was made of that testimony. On June 15 (knowing that the girls were attempting to obtain unemployment compensation), Mann advised the Ohio Bureau that they had left NuTone's employ because of lack of work, but did not inform it that they were ineligible for rehire.

On July 16, Marshall and Charlottie spoke to Mann separately about being recalled to work. Mann told Marshall he had been expecting her back, that he had not called her because there was nothing open for group leaders, but that he would check up to see if there was other work, and would call her the following Monday. He has not since called her. Charlottie's interview was to similar effect, ending with the same promise to call. Mann did not call her either.

On July 21, Mann wrote Della Puckett to contact him about an opening as a packer in which he could use her, but informed her that if she did not call him by July 24, he would assume she was not interested in returning. Due to the fact that the letter was improperly addressed, Della did not receive it until the 28th.[8] She immediately called Mann, informed him what had happened, and asked if she could report to work the next morning. Mann promised to call her that afternoon, but did not do so.

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[8] In the meantime, the original charge had been served on Respondent on *July 22*, claiming discrimination against the three girls.

Mann's testimony offered no substantial refutation of the foregoing, save that he contended that in each instance he had told the employee *to call him*, and that none of them did so. His testimony, being overborne by that of the 3 witnesses for the General Counsel, is not credited.

34 Thus, the evidence in its entirety shows, and I find, (1) that Marshall and the Pucketts were not discharged on June 9; (2) that the lay-off was for legitimate business reasons and that the selection of Marshall and the Pucketts was not motivated by their Union membership or activities; (3) that neither Della or Charlottie Puckett engaged in misconduct at any time during the layoff incident; (4) that in presenting to Mann, along with Marshall, their grievances concerning their layoff and their vacation pay, the Pucketts were engaged in protected concerted activities, discrimination for which is proscribed; (5) that Marshall's conduct on the occasion was not such as to constitute unprotected concerted activity as to her; (6) that the decision not to recall the girls was not made until June 12, or later, and after Respondent had learned of the organizational campaign and of their participation in it, cf. *Miami Coca-Cola Bottling Co.*, 108 NLRB No. 83, 34 LRRM 1031; (7) that the decision, when made, was unrelated to the layoff incident, but was made with calculation and intent to restrain and discourage Union membership and activities;[9] and (8) that but for the discrimination against them, the 3 employees would have been recalled on June 23, when other employees with less seniority were recalled.[10]

It is, therefore, concluded and found that by failing to recall Marshall and the Pucketts on June 23, Respondent engaged in discrimination within the meaning of Section

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[9] The evidence showed, among other things, that the use of profanity was not unusual in the plant (cf. *Miami Coca-Cola Bottling Co., supra*), and that Respondent's supervisors were sometimes offenders. Furthermore, Respondent invoked its decision against the Pucketts also, though conceding that Della had said nothing objectionable and though the evidence did not support its claim that Charlottie had.

[10] In fact, Respondent's campaign literature went so far as to claim that Respondent recognized plant-wide seniority and that, in event of a layoff, it transferred employees to other departments to keep them busy.

8(a) (3) of the Act. Evidence of election campaign misconduct in August, which Respondent relied on as an affirmative defense to reinstatement, is summarized in Section E, *infra*.

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2. The discharge of John David Mills

Mills was employed some 7 months as a production sprayer. He had been elected, around July 1, to the Union's organizing committee within the plant and was very active in signing up applicants for membership. About a week before his discharge, he and the other four Union committeemen called on Corbett and Mann and informed them that they were bringing the Union's organization campaign into the open and were proposing to solicit membership on Company property, but not on Company time. Corbett gave his approval.

On July 29, Mills was summarily discharged on the asserted ground that he had "fattened" (I.E., falsified) the premium count on his production card for the preceding day, specifically that he had entered on the card a total of 474 No. 810 fan blades, whereas he had sprayed only 175.

The evidence is undisputed that Mills had in fact sprayed only 175 of the particular item; and the production card, produced by Respondent and introduced in evidence, shows the entry of 474. Mills testified, however, that he had entered the figures *174* on the card, and claimed that the entry had been altered after he had turned it in. In fact, Mills went so far as to acknowledge as his the figures *74* of the *474* presently appearing on the card, but claimed that the first figure 4 was not his.[11] Mills denied

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that at any time during the discharge incident he had acknowledged the full entry as his, and claimed, in fact, that despite his requests, the card was not produced for his inspection.

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[11] Indeed, Mills was apparently prepared to concede that the downstroke on the first figure 4 was his, but not the cross-stroke which converted the 1 to a 4. If such were the case, it would have obviated the necessity for erasures, which the General Counsel contended was evidence of subsequent alteration. Actually, to the inexpert eye (and no expert testimony was offered) both figure 4's appear identical. Mills' testimony concerning the figures was wholly unconvincing, aside from the fact that it was refuted by Respondent's witnesses as pointed out below.

Mills' testimony was overborne by Respondent's witnesses John Baker, Humig, and Ray Schmitt. Baker testified that he established the error in Mills' card by actual count and reported to Humig (who reported to Mann). Baker and Humig then confronted Mills with the card and called attention to the error. Mills at first claimed that he had painted the full 474, but Baker pointed out that that was impossible because only 434 had been received under requisition and that 259 remained unpainted. Mills then claimed that he had also painted a different kind of blade (No. 830), and Baker pointed out that Mills had also claimed credit for those. Mills then admitted that he "evidently" made a mistake. He made no claim that he had entered only. 174 on the card, but acknowledged to the contrary that the handwriting on the card was his.

Mann and Schmitt had joined the group during the latter part of the conversation. Mann informed Mills that he was discharged, and Schmitt, the guard, accompanied Mills while he picked up his belongings and left the plant.[12]

Mills also denied that he had ever been warned about "fattening the count" on his card, but here again his testimony was overborne by that of Respondent's witnesses. Thus, Humig and Harvey Lawrence testified to numerous occasions when Humig had warned the employees against fattening their counts, and Humig and Baker testified that reference was made to those warnings during the discharge incident. Humig also
37 testified that he had discharged two other employees (Frank May and Bob Brown) for similar offenses in previous years; and there was evidence also that other employees (Hubert Frost and Harvey Lawrence) had been reprimanded.

As direct evidence of discriminatory intent, however, the General Counsel offered the testimony of Estel Frost that approximately two weeks before Mills' discharge, he overheard a conversation between Humig and Baker in which Humig said, "We will have to get rid of Mills. He's getting too many Union cards out." Humig

[12] Schmitt's testimony refuted Mills' claim that he had a further conversation with Mann in Mann's office, during which Mann again refused to show Mills the card.

and Baker flatly denied the incident. Frost's uncorroborated testimony cannot be credited over those denials, particularly in view of certain incredible aspects which developed during his examination, as follows: The incident allegedly occurred in the rest room. Frost was only a *foot* from Humig and Baker, and they were facing him. There were some 25 other persons in the rest room at the time.

The convincing refutation of the testimony of Mills and Frost left the General Counsel's case without substantial foundation. It is, therefore, found on the entire evidence that Respondent's discharge of Mills was not motivated by his Union membership and activities as alleged.

D. *Assistance and support to the Employee Committee*

It was only natural that, following the election and the defeat of the Union, the "Loyalty Group," which theretofore had constituted an informal group under the leadership of its steering committee, might have considered formalizing an organization to deal with the Company. It was more natural that they should do so in view of the suggestion which the Company had planted in its election propaganda that the employees form just such an inside organization. Thus, on August 9, Corbett had written the employees a personal letter in which he stressed
38 his readiness to listen to their complaints, urged the employees to come to him in person instead of going to outsiders, and suggested that "We can have our own Grievance Committees, if you want to—and settle our own quarrels without outsiders interfering." Respondent followed up and emphasized that suggestion on August 17, with the following paragraph in its bulletin of that date to the employees:

> Everyone knows that any time our employees want to form a Grievance Committee to hear complaints—they should choose their own Committees. A few weeks ago—when the employees in Shipping and Packing Departments signed a petition that they needed a water fountain—they got that fountain in *one day!* That's the way we listen to our employees at NuTone.

It was also natural that the leaders of the Loyalty Group should have led, as they did, the movement to form the inside organization. Thus, the evidence shows that the same four employees (Cloyd Vaught, John Daum, Arlene Lindley, and Juanita Griffith) constituted the steering committee, first for the Loyalty Group, and then for the Temporary Committee, the latter of which, as early as September 15, began, with the open assistance and support of the Company, a campaign for a formal permanent organization. On September 22, the steering committee made an announcement to the employees, the following paragraphs of which disclosed the significant nature and functions of the permanent organization and the steps by which it was to be brought into being:

> All NuTone employees will be interested to know that an announcement will soon be made about each department electing people to an Employee Committee —to meet with the company and discuss problems which will help both the employees and the company. A temporary Committee was formed for the purpose of getting this plan started. The following is a report of what has happened so far.
>
> On September 15, 1953, at 2:00 P.M., your Steering Committee, consisting of John Daum, Arlene Lindley, Juanita Griffith and Whitey Vaught, contacted Henry Mann and requested that the company meet with the Employee-Company Relations Committee and discuss things of mutual interest. Our purpose being to promote better understanding and cooperation between the company and the employees. Mr. Mann promised to convey our request to Mr. Corbett and secure a reply. When contacted, Mr. Corbett agreed to meet our Departmental Committee in his office at 3:30 P.M., Wednesday, September 16th 1953. On that date your Temporary Committee met with Mr. Corbett, Mr. Bladh and Mr. Mann, and the following statement was submitted and read by the Committee:
>
> "This Committee was formed for the express purpose of improving the relations between the Company and its employees. We feel the need for

some method to be arranged, whereby the employees and Company alike will sit down with willingness and sincerity on both sides to seek a fair solution to our mutual problems. At that time everyone may feel free to express his views and cooperate in a manner to make NuTone not only a good place to work,—but the best place to work in Cincinnati.

"This first temporary committee was picked at random throughout the plant and a meeting was called. At the meeting it was decided to seek the cooperation of the Company. It is is agreeable to the Company:

1. We would like some arrangements made for holding free democratic elections in every department, so that the employees may choose their own repre entatives by majority vote.

2. Some procedure set-up pertaining to meetings with the Company representative and the duly elected chairman and representatives from each department."

The Company agreed with this movement and stated it was a step in the right direction, which would result in better relations between NuTone and NuToners. It was also learned at the time that the Company has a few gripes of its own, which they would like to present to the duly elected committee and secure the cooperation of the employees.

Henry Mann advised that he is available to meet with the Temporary Committee at any time after they decide what plans can be made for holding a free election and then the time and place can be arranged so that it will be satisfactory to the Temporary Committee and the Company.

John Daum, a member of the steering committee, testified that the permanent committee was elected with the intention of taking employee grievances to Mann and—by his affidavit received without objection, as past recollection recorded—of discussing with Mann wages, working conditions, and incentive standards. Daum testified, however, that the permanent committee never got so far

as actually to discuss with Mann wages or incentive standards, but only "grievances or things that we didn't think were fair."

Mann did not deny the accuracy of any of the statements contained in the notice to the employees quoted above, and he admitted that he and Corbett had held discussions with the Temporary Committee along the lines stated in it, including Company "gripes," though he testified that that term was not specifically used during the discussions. Mann also admitted that he mimeographed the notice at the Committee's request, using Company paper and equipment; that he had it distributed throughout the plant in the usual manner which the Company used to distribute its own literature; and that no charge was made by the Company for any portion of its costs or services. The distribution occurred in part on Company time and was made both by foremen and employees.

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Similarly, the Company mimeographed and distributed for the Temporary Committee a second bulletin, which referred to plans to elect a *permanent* Employee-Company Relations Committee, which contained instructions concerning the election, which informed the employees that the votes would be counted by the foremen, and to which was appended the ballot to be used. Again, the bulletin and the ballot were distributed at least in part on Company time, and in some instances the actual balloting (which took place on September 30) occurred on Company time. Furthermore, as stated in the bulletin, Respondent's foremen actually counted the ballots.

A third bulletin, dated October 1, by which the Temporary Committee announced the results of the election, was again mimeographed by the Company and distributed by it under the same conditions as the former ones.

After the election the permanent Employee Committee met from time to time in the Company cafeteria to conduct its affairs; the meetings were held at least in part on Company time, for which the employees were paid. Mann also met with the full committee of 26 members, on Company time, on several occasions between October 1 and Christmas. He testified that at the first meeting, at which Corbett was also present, Corbett spoke about the new

bus shelter which was being constructed for the comfort of the employees, and that although Corbett did not mention "gripes" as such, he discussed the Company's problems concerning quality and price in connection with meeting competition. Mann admitted that Ira Rose, a member of the Committee, suggested forming a credit union, but testified that there was no discussion of that proposal, and that Willie Fore brought up the subject of a couple of exhaust fans which were not functioning properly and which should be fixed. Mann testified that though the matter was not discussed, he made a note of Fore's complaint and referred it to the maintenance foreman, who repaired the fans.

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Mann also testified that there were at least two meetings with the Committee concerning the Community Chest drive, in which the Committee participated at Mann's request, and during which the employees solicited contributions, issued receipts, and distributed and collected pledge cards. There were also some 3 or 4 meetings concerning arrangements for the employees' Christmas dance and at least 1 meeting in which Mann requested the Committee to assist in putting on the Company's Christmas party for children.

It is unnecessary to discuss or to analyze the foregoing evidence, since the mere recital of it establishes plainly (1) that the Employee Committee was a labor organization within the meaning of the Act, *N. L. R. B.* v. *General Shoe Corporation*, 192 F. 2d 504, 507 (CA 6); *N.L.R.B.* v. *Sharples Chemical Co.*, 209 F. 2d 645, 651-2 (CA 6), enf'ing. 100 NLRB 20; *N. L. R. B.* v. *Oliver Machinery Co.*, 210 F. 2d 946, 947 (CA 6), enf'ing, 102 NLRB 822; *P. R. Mallory Co., Inc.*, 107 NLRB No. 103; *Essex Wire etc., Co.*, 107 NLRB No. 250; *Poe Machine & Eng. Co.*, 107 NLRB No. 287; *Ed Taussig, Inc.*, 108 NLRB No. 82; and (2) that Respondent interfered with its formation and administration and gave it assistance and support. *Ibid;* and see *Harrison Sheet Steel Co.* v. *NLRB*, 194 F. 2d 407, 410 (CA 7); enf'ing. 94 NLRB 81; *N. L. R. B.* v. *Russell Mfg. Co.*, 187 F. 2d 296, 297 (CA 5) enf'ing 82 NLRB 1081 (rehearing on other grounds, 191 F. 2d 358); *Ephraim Haspel*, 109 NLRB No. 8, 34 NRRM 1280.

43 It is immaterial, under the foregoing authorities, that Respondent and the Committee entered into no contract, or that they did not get to the point of actually bargaining about wages and hours; the purposes of the Committee were fully disclosed by the notices to the employees and by Daum's testimony. Those purposes were recognized and acted upon to the extent that grievances and other proposals concerning working conditions were presented on the one side and employer complaints on the other. That negotiations did not go further may well have been due to the filing, on December 9, of an amended charge alleging Respondent's domination and support of the Committee.

Nor is it material that there is no evidence of Committee activity since Christmas, 1953. *Russell Mfg. Co.*, 82 NLRB 1081, 1085, end'd. 187 F. 2d 296, supra; *Saxe-Glassman Shoe Corp.*, 97 NLRB No. 53; *Essex Wire etc., Co.*, supra. its inactive status is not necessarily permanent, and the danger of continued assistance and support to it is obvious unless Respondent is restrained by an appropriate remedial order.

The evidence does not, however, establish domination of the Committee by Respondent. Apart from the counting of the ballots by the foremen, no representatives of management took any part in the meetings or activities of the Committee or attempted to influence its policies. *Ephraim Haspel, supra;* cf. *N.L.R.B.* v. *Wemyss, d/b/a Coca-Cola Bottling Company of Stockton,* 212 F 2d 465, 471 (CA 9) decided April 20, 1954. It will therefore be recommended that the complaint be dismissed, insofar as it alleges domination.

44 E. *Respondent's defense to reinstatement*

Respondent's answer, which made a general denial that Respondent had discriminated against Marshall and the Pucketts, also averred that it had refused them reinstatement "upon lawful grounds." During the presentation of its case, Respondent spelled out more specifically an affirmative defense as follows: That between August 1 and 19, Marshall and the Pucketts, while passing out Union literature outside the plant in company with Union organizers, "used such vile and intemperate language as

to destroy whatever rights to reinstatement they might have had at the time."

However, there was again no evidence which attributed to Della Puckett the use of any such language or which established that she was present at any time when it was used by others. The evidence showed that Virgie Marshall was the chief offender and that Charlottie Puckett was a minor one. It showed also that there was no concert among the girls as to such conduct; that they had separate stands, passing out literature at separate places around the plant property; and that they were not in the presence of each other (with one exception when Marshall and Charlottie were together) on the occasion of any of the incidents which Respondent's witnesses testified to. Ray Sowder was present and was distributing literature either with Marshall or Charlottie on some of the occasions.

At least 6 of Respondent's witnesses attributed to Marshall a variety of vile and obscene statements, as well as cursing and profanity. To set forth the exact language used would be neither rewarding or edifying; it will suffice to suggest its content in general and in relatively genteel terms. In brief, it can be said that in some instances Marshall was charged with profanity and abusive language of the same type which she had used during the layoff incident; that she also made indecent and obscene suggestions relating to biological and bodily functions; that on some occasions she applied the term, "brown noses," to certain employees, and that on others she made specific statements which spelled out explicitly all that the term implies. She also made statements directly attacking the virtue of the female employees generally and of Audrey Vaught in particular; in fact, the evidence indicates that Marshall reserved her prize comments for Audrey and her husband, Lloyd, who acted as one of the leaders of the NuToner group.

Marshall denied that she used most of the profanity and the obscenities attributed to her, and endeavored to justify the remainder on the ground of provocation. The evidence established plainly, however, that Marshall was the leader and the *provocateur*, and that with minor exceptions the NuToner group avoided retaliation in kind. Marshall admitted a number of the incidents about which Respond-

ent's witnesses testified, but gave them a more genteel tone. She admitted, for example, that she had told Mr. Corbett to kiss the girls good morning on an occasion on which Respondent's witnesses had attributed to her a more lurid and indecent suggestion. Rather oddly, Marshall denied that she had ever called any of the employees "brown noses," though she admitted that she had perhaps accused one or more of them more explicitly of acts implied by the term. She also admitted that she may have told Mary Jane Tierney (as Tierney testified) that she would lose her job if the Union got in.

Though the General Counsel offered limited corroboration of certain portions of Marshall's testimony, her own partial admissions again served to corroborate the testimony of Respondent's witnesses, which is credited.

Charlottie's conduct, in comparison, was much less flagrant. Lloyd Vaught testified that during an exchange which he had with Marshall, Charlottie had chimed in and called him an "ignorant s— o— b—." Rose DeAngelis (who had testified earlier and credibly as the General Counsel's witness) testified that Charlottie called her a vile
46 name roughly synonymous with "brown nose," and that she retorted in kind.

Most of the evidence involving Charlottie concerned an exchange between her and Margaret Ball some two weeks prior to the election. The incident occurred when Ball and 3 or 4 companions, leaving the plant, passed Puckett and Ray Sowder on the way to Ball's car. An argument was provoked by Puckett's offer, and Ball's refusal, of Union literature and by Ball's chiding of Puckett for being out there in view of Mr. Corbett's good treatment of the employees; it ended by Puckett saying, "You g— d— s—'s don't know any better . . . You will get yours just the same as we did."

Only the use of the quoted statement is in substantial dispute. Ball's testimony that Puckett made it was corroborated by Ann Lukas and Hilda Nickel. Puckett denied making the statement. Sowder's testimony, offered in corroboration of that denial, is not persuasive. Thus, all other witnesses were agreed that the incident occurred in 2 segments, one before Ball got into her car, and one after she got out again to continue the argument. Sowder did

not recall the latter segment and heard nothing that was said during it. In fact, he testified that he was busy passing out literature at the time and was paying no particular attention, other than to note that the Ball group was passing by. Under the circumstances, Sowder's testimony affords no substantial corroboration for Puckett's denials, which are overborne by Ball's corroborated testimony.[13] Puckett's denials of the Vaught and DeAngelis testimony are also not credited.

47 As indicated by the foregoing evidence, the election campaign had engendered between the opposing factions of employees the type of heated atmosphere which is frequently the concomitant of strike situations; and cases involving such situations furnish the closest analogies to the present case. Furthermore, the underlying question is the same, i.e., whether, while engaged in what constituted protected concerted activities, the employees had engaged in such flagrant acts of misconduct as to render them unsuitable for reemployment. The Board and the Courts have frequently held that the use of vilifying and disparaging language by a striker on the picket line does not affect his right to reinstatement. See, e.g., *N.L.R.B.* v. *Deena Artware, Inc.*, 198 F. 2d 645, 652 (CA 6), cert. den., 345 U. S. 906, enf'ing as mod., 86 NLRB 732 and 95 NLRB 9; *Kansas Milling Co.* v. *N.L.R.B.*, 185 F. 2d 413, 420, (CA 10), enf'ing. as mod., 86 NLRB 925, 928. Thus, while the Board does not condone the use of profane and abusive language, it has recognized that in the realities of industrial life, particularly where vital issues are at stake during a strike or an organizing campaign, employees frequently express their sentiments in crude and vulgar language, not suited either to the pleasantries of the drawing room or to the courtesies of parliamentary disputation. Cf. *Longview Furniture Co.*, 100 NLRB 301, 304, mod. and enf'd., 206 F. 2d 274. (CA 4), decided July 27, 1953.

The *Longview* case may ultimately go far toward resolving the question in the present case. However, the

[13] Lukas also testified that on some different occasion Ball and Puckett engaged in an argument about the latter's vacation pay, during which Puckett had cursed Corbett. Puckett denied that testimony. As Ball's testimony contained no corroboration of Lukas', Puckett's denial is credited.

present finding must be made without the benefit of the Board's determination of the question which the court remanded to it in that case, concerning whether a group of strikers had banded together in hurling profane, obscene, and insulting epithets at non-striking em-
ployees who were attempting to work. The Court
48 directed the Board to determine which of the strikers should be denied reinstatement under the principles set forth in its decision, stated in part as follows:

> From the standpoint of discharge or reinstatement there is no difference in principle between engaging in acts of violence and using profane and insulting language towards fellow employees in an effort to drive them from work.
>
> . . . . We think it equally clear that the act does not protect them in using insulting and profane language calculated and intended to publicly humiliate and degrade employees who are attempting to work in an effort to prevent them from working. They are no more privileged to infringe upon the rights of fellow employees than upon the rights of the employer.

However, the Board has recently indicated its views in a somewhat analogous situation, though different in the respect (as here) that there was no concert or banding together to utter the opprobrious language. Thus, in *Efco Mfg. Co. Inc.*, 108 NLRB No. 52, 33 LRRM 1516, 1518, decided April 15, 1954, the Board drew the line between the following two cases, ordering reinstatement in the first one and denying it in the second: (a) The striker called a non-striker a "wop-bastard," challenged a company official to a fist fight as a means of settling the strike, and called him "yellow" when he failed to accept the challenge. (b) The striker ascribed to a non-striker the capability of committing an act so foul as to be unmentionable.

Those criteria may properly be applied to the present case, as representing the latest views of the Board (though they do not, of course, constitute a precise or complete standard covering the full field of misconduct via profane
and indecent language). When applied, they plainly
49 dictate the rejection of Respondent's defense as to

both of the Pucketts. Thus, Della used no objectionable language and was not present when any was used. Charlottie's language, though not suited to the pleasantries of the drawing room, paralleled the language used in case (a), *supra*.

Marshall's case is more difficult of determination; her language fell somewhere between that given in the two *Efco* examples. However, the extent and the character of her utterances was such that the latter standard seems obviously more suitable than the first; and it is, therefore found that the remedy of reinstatement should be denied as to her.[14]

Though the usual remedy of reinstatement and back pay will be recommended for the Pucketts,[15] there still remains a question as to the framing of a proper order to remedy Respondent's unfair labor practice regarding Marshall. Obviously, except for Respondent's discrimination against her, she would have been recalled on June 23, 1953, and would have been employed certainly until the time of her misconduct, the most flagrant of which occurred immediately prior to the election. It will, therefore, be recommended that Respondent make Marshall whole, in the usual manner, for any loss of pay she may have suffered from June 23, through August 18, 1953, inclusive.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

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[14] There is the added circumstance of Marshall's threat that Tierney would lose her job if the Union got in. The Board held in *Tennessee Coach Co.*, 84 NLRB 703 and in *Majestic Metal Specialties, Inc.*, 92 NLRB 1864, that such a statement, made by an employee as an individual and not as a Union agent, was within the realm of protected activity. Subsequent to those holdings, the *Tennessee Coach* case was denied enforcement, 191 F 2d 546 (CA 6); and the Board has apparently not since indicated whether it will acquiesce in the Court's view or will continue to adhere to its own. In any event, determination of the point is unnecessary here, since Marshall's other conduct has been found sufficiently flagrant as to warrant denial of reinstatement.

[15] Respondent's letter of August 21 to Della Puckett cannot be found to be a valid offer of reinstatement in view of its misdirection and Respondent's failure to reinstate her on her application after Mann's attention was called to the error.

Conclusions of Law

1. Respondent's activities set forth in Section III, above, occurring in connection with Respondent's operations described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing the free flow thereof.

2. The Union and the Employee Committee are labor organizations within the meaning of Section 2.(5) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Virgie Marshall, Charlottie Puckett, and Della Puckett, thereby discouraging membership in the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (3) and (1) of the Act.

4. By assisting, contributing support to, and interfering with the formation and administration of the Employee Committee, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (2) and (1) of the Act.

51 5. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

The remedy

It having been found that Respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and that it take affirmative action designed to effectuate the policies of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, it is recommended that Respondent, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in the Union, or in any other labor organization of its employees, by failing to recall them after layoff, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment;

(b) Assisting, contributing support to, or in any other manner interfering with, the formation and administration of NuTone Employee-Company Relations Committee, or any other labor organization of its employees, or recognizing said Committee as the representative of any of its employees for the purpose of dealing with them concerning grievances, labor disputes, wages, hours of work, or other conditions of employment unless and until said organization shall have been certified by the board;

52 (c) Interrogating its employees concerning their Union membership and activities, soliciting them to report on such activities, or informing them that a layoff was due to such activities; or discriminatorily applying its no-posting, no-solicitation, and no-distribution rules so as to hinder, restrain, and impede the Union's organizational efforts;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist United Steelworkers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.[16]

2. Take the following affirmative action:

(a) Offer to Charlottie Puckett and Della Puckett immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority

[16] See *Consolidated Industries, Inc.*, 108 NLRB No. 14, footnote 3.

and other rights and privileges, and make them whole in accordance with the Board's usual remedial policies (*Chase National Bank*, 65 NLRB 827; *Crossett Lumber Co.*, 8 NLRB 440; *F. W. Woolworth*, 90 NLRB 289) for any loss of pay they may have suffered since June 23, 1953, by reason of the discrimination against them;

(b) Make whole Virgie Marshall, in the manner prescribed in paragraph (a), *supra*, for any loss of pay she may have suffered from June 23, to August 18, 1953, inclusive, by reason of the discrimination against her.

(c) Withdraw and withhold all recognition from Nutone Employee-Company Relations Committee as the representative of any of its employees for the purpose of dealing with them concerning grievances, labor disputes, wages, hours of work, or other conditions of employment, unless and until said organization shall have been certified by the Board;

(d) Post in its plant at Cincinnati, Ohio, copies of the notice attached hereto and marked Appendix A. Copies of said notice to be furnished by the Regional Director for the Ninth Region shall, after being signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material; and

(e) Notify the Regional Director for the Ninth Region, in writing, within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, what steps Respondent has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondent to take the action aforesaid.

It is further recommended that the complaint be dismissed insofar as it alleges violations of the Act other than those found herein.

Dated at Washington, D. C., this 30th day of July, 1954.

(Signed) GEORGE A. DOWNING
Trial Examiner

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Appendix A to Intermediate Report

NOTICE TO ALL EMPLOYEES
PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in the UNITED STEELWORKERS OF AMERICA, CIO, or in any other labor organization of our employees, by failing or refusing to recall them after layoff, or in any other manner discriminate in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT assist, contribute support to, or in any other manner interfere with the formation and administration of NUTONE EMPLOYEE-COMPANY RELATIONS COMMITTEE, or of any other labor organization of our employees, and we will not recognize said Committee as the representative of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, hours of employment, or other conditions of employment. WE WILL NOT Interrogate our employees concerning their union membership and activities, solicit them to report on such activities, or inform them that a layoff was due to such activities; and we will not discriminatorily apply our no-posting, no-solicitation, and no-distribution rules so as to hinder, restrain, and impede our employees in their organizational efforts.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist UNITED STEELWORKERS OF AMERICA, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8(a)(3) of the Act.

WE WILL offer to Charlottie Puckett and Della Puckett immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of our discrimination against them.

WE WILL make whole Virgie Marshall for any loss of pay she may have suffered from June 23 to August 18, 1953, inclusive, by reason of our discrimination against her.

WE WILL withdraw and withhold all recognition from NUTONE EMPLOYEE-COMPANY RELATIONS COMMITTEE as the representative of any of our employees for the purpose of dealing with them concerning grievances, labor disputes, wages, hours of work, or other conditions of employment, unless and until said organization shall have been certified as such representative by the National Labor Relations Board.

NUTONE, INCORPORATED
(Employer)

Dated..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

* * * * * * * * * *

57 BEFORE NATIONAL LABOR RELATIONS BOARD

112 NLRB No. 143 D-9052
Cincinnati, Ohio

Decision and Order of NLRB—Filed June 13, 1955

On July 30, 1954, Trial Examiner George A. Downing issued his Intermediate Report in this case, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain other alleged unfair labor practices and recommended dismissal of these allegations of the complaint. Thereafter the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions and modification.

1. The Respondent contends that the evidence is not conclusive as to its knowledge of the Union activity of Charlottie Puckett and Della Puckett. It urges that
58 there is no direct and specific testimony that DeAngelis reported Marshall's statement that Charlottie Puckett and Della Puckett had signed union cards to supervisor Millichamp. The record discloses that Marshall, who is credited in this respect by the Trial Examiner, told DeAngelis that she and the Pucketts had signed union cards and that DeAngelis testified that she told Millichamp everything that Marshall had said on June 9. The finding that the Respondent had knowledge of the Pucketts' union acticity, however, is not based solely upon this evidence. On June 9, when they were laid off, the three employees went together to Mann, the Respondent's director of indus-

trial relations, and registered complaints in a group, with Marshall as the main spokesman. They apparently were the only employees laid-off that day who went to Mann's office. On June 10 DeAngelis reported to Millichamp, and on June 11 the Union made its first distribution of literature at the plant. Marshall's participation was immediately reported to Millichamp. Thereafter the Respondent made its decision to get rid of, not only Marshall, but also the Pucketts. Accordingly their records were changed sometime after June 12 to show that they were not eligible for recall, and, as detailed by the Trial Examiner, the 3 employees were never informed, despite several contacts between the Respondent and the 3 employees, that the decision not to recall them had been made, but to the contrary, they were informed that they would be recalled. We agree with the Trial Examiner that the Respondent had knowledge of Union Activity, not only as to Marshall, but also as to the Pucketts with whom Marshall was associated.

59 We agree with the Trial Examiner that the Respondent's defense to the reinstatement of Della and Charlottie Puckett was properly rejected.[1]

2. The Trial Examiner found that the Respondent violated Section 8(a) (2) and (1) of the Act by discriminatorily enforcing its own plant rules prohibiting posting, solicitation, and the distribution of literature.[2] He predicated a finding of unlawful conduct on his conclusion that the Respondent "broke its own rules . . . by campaigning against the Union in the normal arena, and the most effective one for reaching the employees, . . . while simultaneously denying access to it by the Union." We are in disagreement with this conclusion. Valid plant rules against solicitation and other forms of union activity do not control an employer's actions. Management prerogative certainly extends far enough so as to permit an employer to make rules that do not bind itself. Otherwise, an em-

[1] Nothing in the Board's decision on remand in Longview Furniture Company, 110 NLRB No. 246, (which the Trial Examiner notes was pending undetermined when the Intermediate Report issued) dictates a different result.

[2] The complaint does not allege that the rules in this case were themselves invalid, and there is no exception to the Trial Examiner's conclusion that the rules themselves were proper.

ployer can only enforce a rule he promulgates so long as he conducts himself according to the rule.

We fail to perceive any significant distinction between this situation and the facts presented in the Livingston Shirt case.[3] Here, like there, the employer's expressed arguments contained no threats, promises of benefits, or otherwise coercive statements. The very essence of Section 8(c) is that expressions of opinion cannot be unfair labor practices. This does not mean that the opinion must be devoid of any expression for or against a union. So long as there is nothing coercive in the opinion, in other words, so long as it remains an opinion, it is protected. To say, as does our dissenting colleague, that distribution of literature is not the same as oral presentation, and therefore that Section 8(c) is not applicable, is to subvert the plain meaning of that section. Not only is the written word as much "speech" as oral expressions, but Section 8(c) itself specifically enumerates "written, printed, graphic or visual" expressions as coming within its purview.

We also reject as untenable the General Counsel's argument that the other unfair labor practices committed by the Respondent convert otherwise protected opinions and views into unfair labor practices. To the extent that the Respondent violated the Statute, as found herein, we shall issue an appropriate cease and desist Order. We see no warrant, however, to enjoin the Respondent from conduct which the law expressly protects, merely because it engaged in other acts which are unlawful and which it will be required to discontinue.

Accordingly, we shall dismiss the allegations of the complaint that the Respondent discriminatorily enforced its valid no-solicitation rules.

3. We agree with the Trial Examiner's finding that the Employee-Company Relations Committee is a labor organization within the meaning of the Act[4] and that the Re-

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[3] 107 NLRB 400.

[4] As the evidence establishes that the Committee was created for the purpose of dealing with the Respondent concerning, among other things, the wages and working conditions of all the Respondent's employees, this case is distinguish-

spondent interfered with its formation and gave it assistance and support in violation of Section 8(a) (2) and (1) of the Act. For the reasons given by the Trial Examiner, however, we find that the evidence does not support the allegation that the Respondent dominated the Committee.

61

Order

Upon the entire record in this case, and pursaunt to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that Nutone, Incorporated, Cincinnati, Ohio, its officers, agents successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in the United Steelworkers of America, CIO, or in any other labor organization of its employees, by failing to recall them after layoff, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment;

(b) Assisting, contributing support to, or in any other manner interfering with the formation and administration of Nutone Employee-Company Relations Committee, or any other labor organization of its employees, or recognizing said Committee or any successor thereto as the representative of any of its employees for the purpose of dealing with them concerning grievances, labor disputes, wages, hours of work, or other conditions of employment unless and until said organization shall have been certified by the Board;

(c) Interrogating its employees concerning their Union membership and activities, soliciting them to report on such activities, or informing them that a layoff was due to such activities;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to

able from *N.L.R.B.* v. *Associated Machines, Inc.*, 219 F. 2d 433 (C.A. 6). In the *Associated Machines* case, the Court held that a committee that existed for the sole purpose of discussing individual, as contrasted with collective, complaints, was not a labor organization within the meaning of the Act.

self-organization, to form, join, or assist United Steelworkers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent, that such right may be
62 affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Charlottie Puckett and Della Puckett immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them whole in accordance with the Board's usual remedial policies (*Chase National Bank*, 65 NLRB 827; *Crossett Lumber Co.*, 8 NLRB 440; *F. W. Woolworth*, 90 NLRB 289) for any loss of pay they may have suffered since June 23, 1953, by reason of the discrimination against them;

(b) Make whole Virgie Marshall, in the manner prescribed in paragraph (a), supra, for any loss of pay she may have suffered from June 23, to August 18, 1953, inclusive, by reason of the discrimination against her;

(c) Withdraw all recognition from Nutone Employee-Company Relations Committee as the representative of any of its employees for the purpose of dealing with them concerning grievances, labor disputes, wages, hours of work, or other conditions of employment unless and until said organization shall have been certified by the Board;

(d) Post in its plant at Cincinnati, Ohio, copies of the notice attached to the Intermediate Report marked Appendix A.[5] Copies of said notice to be furnished by

[5] In the caption of the notice the words "The Recommendations Of A Trial Examiner" shall be changed to "A Decision And Order" and the reference to the application of Respondent's rules will be deleted. If this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "A Decision And Order" the words "A Decree Of The United States Court Of Appeals, Enforcing An Order."

63 the Regional Director for the Ninth Region shall, after being signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material; and

(e) Notify the Regional Director for the Ninth Region, in writing, within ten (10) days from the date of Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED That the complaint be, and it hereby is, dismissed insofar as it alleges violations of the Act other than those found in the Decision and in the Intermediate Report.

Dated, Washington, D. C. June 13, 1955

Guy Farmer, Chairman
Ivar H. Peterson, Member
Philip Ray Rodgers, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

ABE MURDOCK, *Member*, concurring in part and dissenting in part:

I agree with my colleagues that the Respondent violated Section 8 (a) (1) by various acts of interference, restraint, and coercion. I also concur with their conclusions as to the Pucketts and Marshall. However, I cannot agree with their reversal of the Trial Examiner's finding of a violation with respect to the discriminatory application of the Respondent's rules regarding no-posting, no solicitation, and no-distribution of literature; nor with their conclusion that the Committee was not an employer-dominated organization.

64 My colleagues have reversed the Trial Examiner and, applying the decision in Livingston Shirt Corp., have found that the Respondent's discriminatory enforcement of its no-solicitation rules was not violative of the

Act. In *Livingston Shirt,* the majority reversed prior precedents and held that an employer's discriminatory application of a no-solicitation rule to deny a union's request to speak on company time and premises where the employer had made such a speech, was not an unfair labor practice. I dissented in that case and refer to my dissent for a detailed statement of my views on the necessity of equal treatment. Apart from my fundamental disagreement there, I note that the instant case is distinguishable in certain respects and it is not necessary to extend the doctrine of *Livingston Shirt* this far. That case involved discrimination in the matter of *speeches.* This case involves discrimination in distribution of literature. The majority in *Livingston Shirt* made much of the fact that the traditional place for a union's speeches is in the union hall while the plant is the logical place for the employer to speak. It cannot similarly be said that a plant is not a traditional place for a union to distribute literature. Where an employer chooses to ban the distribution of literature on company time and property, I do not believe the Act permits him to discriminate as he did here by breaking his own rules to distribute anti-union literature before the election or to aid the Committee after the election. I note that the majority claims that Section 8(c) protects such discrimination as they did in Livingston Shirt. They still ignore the fact that the Court of Appeals for the Second Circuit in *Bonwit-Teller* specifically affirmed the Board's rejection of the theory that discrimination is protected by Section 8(c), the Court stating in its decision, "neither Section 8(c) nor any issue of 'employer free speech' is involved."

I also note the distinction that in *Livingston Shirt* the respondent's violation of its own rule on solicitation stood alone. The Court of Appeals for the Sixth Circuit
65 in *N.L.R.B.* v. *F. W. Woolworth,* 214 F. 2d 78, found worthy of notice the fact that in that case also the alleged violation stood alone. Quite the contrary is true in the present case. The Board has found that this Respondent has iinterrogated its employees as to union activities, has solicited them to report on those activities, has requested them to turn in the names of union adherents, and has promised them benefits for their espionage. It has

also been found that the Respondent discriminatorily refused to reinstate certain active union adherents. Furthermore, the Respondent, as found by the majority, has given illegal support and assistance to another labor organization.

In this surcharged atmosphere the Union was engaged in a struggle with an active anti-union group for the support of the Respondent's employees. That group later became the nucleus for the labor organization mentioned above. In this context the Respondent emphasized that it would tolerate no posting on company property, no solicitation on company time, and no distribution of literature on company property. It professed neutrality between the two competing groups of employees and stated that the rules would be applied to both factions. The Respondent, however, then, while enforcing the rules against the Union and ostensibly against the anti-union group, enlisted on the side of the anti-union group, and between June 11 and August 18, the eve of the election, distributed in the plant eight separate pieces of anti-union propaganda. At the same time, it was encouraging its employees to set up an inside organization. Moreover, the bulletin of August 17, which told the employees that they should set up their own committee, was distributed in the plant by the Respondent. To put the cap on the situation and remove any possible doubts as to its discriminatory motive, when the Union lost the election, the Respondent completely ignored the rules in illegally assisting, as found by the ma-
66 jority, the Employee-Company Relations Committee, using as a nucleus the former anti-union group.

Under these circumstances, I am inescapably led to the conclusion that the Respondent violated the Act by discriminatorily applying its no-solicitation rules, and I would affirm the Trial Examiner in this respect.

The Trial Examiner found that the Respondent interfered with the formation and administration of the Employee-Company Relations Committee and gave it unlawful support and assistance; the Board has adopted this finding, and I agree. The Trial Examiner, however, found that the Respondent had not dominated the organization, and the Board has also affirmed that conclusion, overrul-

ing the General Counsel's exception. With this, I do not agree. Plainly there is merit in the General Counsel's exception.

On August 9, 1953, Corbett, Respondent's president, in a letter to employees in which he stressed his readiness to deal wtih employees' complaints stated, "We can have our own Grievance Committees, if you want to—and settle our own quarrels without outsiders interfering." On August 17 in a bulletin to employees the Respondent stated, "Everyone knows that any time our employees want to form a Grievance Committee to hear complaints—they should choose their own Committees." On August 19 the Union lost a Board-conducted election. On September 22 the employees were informed by a "Temporary Factory Committee" that an announcement would be made later with respect to the election of members to the Committee by the employees in each department. On September 30 instructions on how to vote and the ballots were distributed, and the employees voted for someone in their respective departments to represent the departments on the Committee. The foreman passed out the ballots, received them back, and counted the votes. On October 1, the results of the election, listing the representative for each department, were announced by bulletin. These three bulletins and the ballot were mimeographed by the Respondent using its own paper and equipment and distributed throughout the plant in the usual manner which the Respondent used to distribute its own bulletins. These bulletins were distributed in part on Respondent's time, and, although the bulletin containing the ballot stated that the voting would take place during the rest period, in some instances the balloting took place on Respondent's time. No charge was made by the Respondent for its cost or services. The Respondent met with the Committee from time to time, at least in part on Respondent's time, for which the Committee members were paid.

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These facts conclusively prove that the Employee-Company Relations Committee was a creature of the Respondent, so dominated by it as to be incapable of becoming a bona fide bargaining representative of the employee. At the outset it must be recognized that the Committee was an employee representation plan. Necessarily, there was

inherent in it the structural and other vices which the Board pointed out in detail in *Carpenter Steel Company*[6] make such organizations employer dominated. The idea was initiated by the Respondent. Although taken up by an employee committee, the actual creation of the organization through election of representatives came about because Respondent's foremen passed out ballots and counted the votes. The employees had no opportunity to accept or reject such a bargaining representative—only to vote for a departmental representative. The bargaining representative was foisted on them by the Employer. No provision exists for meetings of members whereby employees may collectively instruct their representatives as to their desires, dissolve the plan, affiliate with another organi-
68 zation, or otherwise exercise the controls which members of an ordinary labor organization have over its existence and operation. As employees can only elect a representative of their own department, the employer can control the membership of the Committee by discharging a representative or transferring him to another department. The Committee, having no resources of its own, was financially dependent upon the Respondent. These factors combine to persuade me that the Employee-Company Relations Committee was so dominated by the Respondent and such an impediment to an expression of the free will of the employees that the Board should order it disestablished.

I note that the Board customarily finds domination and orders disestablishment under such circumstances. See, e.g. *Harrison Sheet Metal Company,* 94 NLRB 81, in which the Board made a finding of domination on similar facts which was specifically upheld by the Court of Appeals for the Seventh Circuit (194 F. 2d 407). The cases relied on by the Trial Examiner and the majority, Ephraim Haspel, 109 NLRB No. 8, and *N.L.R.B.* v. *Weymss, d/b/a Coca Cola Bottling Company of Stockton,* 212 F. 2d 465, are readily 109 NLRB No. 8, and *N.L.R.B.* v. *Wemyss, d/b/a Coca Cola* distinguishable as they did not involve employee representation plans but ordinary independent labor organizations. Also in both cases, unlike the instant case, the employees

[6] 76 NLRB 670, 687-690.

had an opportunity to determine whether or not they wished to be represented by the "inside" labor organization and they made their choice.[7] I further note that, so far as I am aware, this is the first time in the history of the Board that it has found that an employee representation plan which an employer has foisted on employees is not a *dominated* labor organization and failed to disestablish it. I cannot accept such a departure from sound precedent.

69

I find this departure all the more difficult to understand in view of the fact that only last month this Board stated in a decision that the legislative history of the Act shows that employee representation plans typify the "employer *dominated* bodies" toward which the proscription in the Act against "employer domination and support of labor organizations" was directed.[8]

Dated, Washington, D. C., June 13, 1955.

Abe Murdock, Member

NATIONAL LABOR RELATIONS BOARD

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[7] I find the instant case a much stronger case for domination than the *Ephraim Haspel* case, but note that one of my majority colleagues dissented in that case from a refusal of a majority there to find domination.

[8] *Northeastern Engineering, Inc.*, 112 NLRB No. 96:

> . . . as the legislative history of the Act shows, . . the term "labor organization" was designedly used "very broadly" to embrace groups which are not "labor organization" or "unions" as that term is popularly understood, such as loosely-formed "employee representation committees" or "plans." Yet these typified in large part the employer dominated bodies, called "company unions", which Congress viewed as hostile to the guarantees of Section 7 of the Act and with which it sought to cope through the proscription in the Act against employer domination and support of labor organization.

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD

NINTH REGION

Case No. 9-CA-704

In the Matter of:

NUTONE INCORPORATED

and

UNITED STEELWORKERS OF AMERICA, C.I.O.

Room 703, Federal Building,
Cincinnati, Ohio.

Transcript of Testimony—Monday, April 26, 1954

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock, a.m.

BEFORE:

GEORGE A. DOWNING, ESQ., Trial Examiner.

APPEARANCES:

E. DON WILSON, ESQ., and
HARRY D. CAMPODONICO, ESQ.,
1200 Ingalls Building,
Cincinnati, Ohio,
appearing on behalf of the General Counsel.

MALCOLM F. HALLIDAY, ESQ.,
GEORGE R. CASSIDY, ESQ.,
CHARLES A. ATWOOD, ESQ.,
of Frost & Jacobs,
2300 Union Central Building,
Cincinnati, Ohio,
appearing on behalf of Nutone Incorporated, the Respondent.

MR. CHESTER A. MORGAN,
Staff Representative,
United Steelworkers of America, CIO,
806 Keith Building,
Cincinnati 2, Ohio,

appearing on behalf of United Steelworkers of America, CIO, the Charging Party.

* * * * * * * * * *

67 **Henry Mann**

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * * * * * * * * *

73 Direct Examination

Q. (By Mr. Wilson) Mr. Mann, will you please state your full name? A. Henry Mitchell Mann.

Q. Are you the Henry Mann who executed General Counsel's Exhibit 1-Q which I show to you, being the Answer of Respondent? A. Well, this is not my signature.

Mr. Wilson: May I see the original, please, Mr. Trial Examiner?

Trial Examiner: Will you look at the original and see if that is your signature?

(Document handed to witness.)

The Witness: Yes, that is my signature.

Q. (By Mr. Wilson) You are the director of industrial relations for NuTone? A. Yes, sir.

Q. Approximately when did you commence your
74 duties as director of industrial relations for NuTone? A. November 1, 1952.

* * * * * * * * * *

146 Direct Examination (Resumed)

* * * * * * * * * *

193 Q. All right. You have directed representatives of the employee Relations Committee to solicit funds for the Community Chest at the plant during working time, have you not?

* * * * * * * * * *

The Witness: I asked them to solicit for the Community Chest, which they said they would, and did.

Q. (By Mr. Wilson) And that was in October of 1953? A. Whenever the Community Chest drive was on.

Q. You recall it was sometime last Fall? A. Last Fall, yes, sir.

* * * * * * * * * *

194 Trial Examiner: You didn't discriminate against the Red Cross, did you?

The Witness: No, sir. We put publicity up on our bulletin board for the Red Cross, urging people to give, and I understand the company made a gift to the Red Cross.

Q. (By Mr. Wilson) Do you recall that approximately two days after you laid off the Marshall girl and the two Pucketts, the United Steelworkers, CIO, distributed literature at the plant? A. Yes, I believe it was about that time.

Q. About June 11? A. Yes.

* * * * * * * * * *

195 Q. (By Mr. Wilson) Did you permit employees of NuTone to solicit memberships in the CIO Steelworkers? A. We did not prohibit them.

Q. Have you reprimanded employees about soliciting memberships in the Steelworkers? A. No, sir, I have not.

Q. To your knowledge, have any supervisors reprimanded employees for soliciting membership in the Steelworkers, at any time? A. If they did it was for solicitation on company time, not on employees' time.

Q. Well, then did you prohibit employees from soliciting membership in Steelworkers on Company time? A. On Company working time? They were asked not to.

Q. Was it simply a request? A. Well, a notice was put up to that effect.

* * * * * * * * * *

197 Trial Examiner: Well, during your solicitation rule, did you forbid such solitation during rest periods?

The Witness: No, sir.

* * * * * * * * * *

198 Q. (By Mr. Wilson) Well, to your knowledge, or did you ever hear that a number of employees had been warned about soliciting and that there have been reprimands, has that ever come to your attention in any way? A. Yes, I understand that such reprimands were made on working time, but for doing that on working time.

Q. And did you also understand that a number of employees have been warned about soliciting? A. Well, that would go hand in hand with the reprimand, that is, it was not a reprimand, it was a warning, they were just told not to do that, as I understand it. I didn't do it.

Q. Do you recall that there was a so-called loyalty group of employees also known as NuToners for NuTone, who campaigned against the Union prior to the election on August 19, 1953? A. I understand there was.

199 Q. Do you recall that during the campaign immediately before the election, a girl employee passed around a cup, soliciting funds for the so-called loyalty group? A. I understand that a girl was reprimanded by her foreman for having done that.

* * * * * * * * * *

200 Q. (By Mr. Wilson) My question is this, though: You do know and you knew, did you not, that the foremen did stop Steelworkers adherents from passing out buttons and membership cards on company time? A. Both groups, they stopped both groups from working time as distinguished against the rest periods. The foremen were told that the rest periods were employees' time.

* * * * * * * * * *

201 Q. Well, the company itself posted signs on company property, did it not? A. Yes, sir.

Q. And you have seen signs, for example, for the Community Chest, or for the Cancer Fund or for the Heart Foundation, etcetera, on company property, have you not? A. Yes, sir.

* * * * * * * * * *

202 Q. (By Mr. Wilson) I show you General Counsel's Exhibit 6 for identification, and ask you if General Counsel's Exhibit 6 for identification was posted on Company property throughout the plant on or about August 5, 1953?

* * * * * * * * * *

Offers in Evidence

Mr. Wilson: I offer General Counsel's Exhibit 6 for identification in evidence.

203 Trial Examiner: Any objection?
Mr. Atwood: None.
Trial Examiner: It will be received.

* * * * * * * * * *

Q. (By Mr. Wilson) I show you General Counsel's Exhibit 7 for identification. When you conclude reading it will you let me know? A. Yes, sir, I have read it.

Q. Is it a fact that General Counsel's Exhibit 7 for identification was posted on or about, and around Company property, on August 10, 1953? A. Yes.

* * * * * * * * * *

Trial Examiner: What do you mean, throughout the plant, Mr. Witness?

The Witness: These were given to the foremen with instructions to post them in their departments, and that was what I assumed that he meant by "throughout the plant".

* * * * * * * * * *

204 Mr. Wilson: I offer General Counsel's Exhibit 7 for identification in evidence.
Trial Examiner: Any objection?
Mr. Atwood: None.
Trial Examiner: It will be received.

* * * * * * * * * *

206 Q. Does the Company regularly, from time to time, distribute literature on Company property? A. Yes.

Q. From time to time the NuTone Employee Relations Committee has distributed literature on Company property, has it not? A. They did distribute some last fall, I believe.

Q. Well, you know, do you not, that the Company, in behalf of the NuTone Employee Relations Committee, had literature distributed for such Committee for the purposes of having an election conducted so that the NuTone Employee Relations Committee could have its committee elected? A. Yes.

Q. And that literature was distributed on Company time? A. Yes.

Q. And it was collected on Company time, that is, the ballots? A. They were instructed to pass them out at the break and collect them at the break.

Q. But you know, do you not, that the literature was distributed before the break? A. Yes. I don't know that it was distributed before the break. The instructions were to distribute it on the rest period and collect it on the rest period.

Q. In any event you also know, do you not, that
207 various of your foremen counted, or participated in the counting of the ballots for the election of the representatives of the NuTone Employee Relations Committee, or whatever it is? A. Yes.

Trial Examiner: Who prepared the literature that was distributed?

The Witness: This Employee Relations Committee, this group.

Trial Examined: In what form was it, typewritten, printed, mimeographed?

The Witness: Mimeographed.

Trial Examiner: Where was it mimeographed?

The Witness: It was mimeographed by the Company, or, that is, on Company equipment.

Trial Examiner: All right.

Q. (By Mr. Wilson) And the Company supplied the paper? A. Yes.

Q. And of course the Committee was not charged for the paper or for the mimeographing? A. No.

* * * * * * * * * *

208 The Witness: That was in the fall of the year, sir.

* * * * * * * * * *

Q. (By Mr. Wilson) I show you, sir, what I have had marked as General Counsel's Exhibit No. 8 for identification, and ask you to look at it and let me know when you have finished. A. All right.

Q. Can you tell us, sir, if General Counsel's Exhibit 8 for identification was prepared by the Company and passed out and distributed on Company property, and also posted on the walls and various other places so that it would come to the attention of the employees at NuTone, on or about August 12, 1953? A. That was given to the foremen with instructions to post it, about that date.

Mr. Atwood: May I see that, please?

209 Mr. Wilson: Surely (handed to Mr. Atwood.)

Q. (By Mr. Wilson) And to your knowledge General Counsel's Exhibit No. 8 for identification was posted on or about that date; is that right? A. Yes.

Mr. Wilson: I offer General Counsel's Exhibit 8 for identification in evidence.

Trial Examiner: Any objection?

Mr. Atwood: None.

Trial Examiner: It will be received.

(The document heretofore marked General Counsel's Exhibit No. 8 for identification was received in evidence.)

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210 Q. (By Mr. Wilson) Without respect, now, to whether there at one time was more of that or not, did you at least prepare the memorandum which it attached to that larger sheet, the memorandum going, "A great decision will soon be made by you"? A. Yes.

Q. And, again, without respect to whether the attachment to General Counsel's Exhibit 9 is complete or not, did you see to it that that was distributed throughout the plant? A. I believe this was mailed, sir.

* * * * * * * * * *

211 Mr. Wilson: May we have a stipulation for the sake of the record that the election was held, the National Labor Relations Board election was held August 19, 1953?

Mr. Atwood: May we at the same time stipulate that the petition for an election was filed July 16th?

Mr. Wilson: Subject to a check—and I don't question the accuracy of the statement—I so stipulate.

Mr. Atwood: It is so stipulated.

Trial Examiner: It is stipulated, then, that the petition was filed on July 16th, and the election held on August 19th, is that correct?

Mr. Atwood: That's correct.

* * * * * * * * * *

213 Q. (By Mr. Wilson) I show you General Counsel's Exhibit 10 for identification, and I ask you if that was distributed by the Employer at NuTone prior to the election? A. No, sir, that was mailed.

Q. To all employees? A. (Nods.)

Q. The answer is yes? A. Yes, sir.

214 Q. And approximately when? A. It would be difficult for me to give you the exact date, sir. It was several days before the election.

Trial Examiner: We will take a five-minute recess.

(Short recess.)

Trial Examiner: The hearing will be in order.

(Documents were thereupon marked General Counsel's Exhibit No. 11-A through 11-H for identification.)

Mr. Wilson: I propose a stipulation that General Counsel's Exhibit 11-A for identification was distributed by being passed out to employees at NuTone on or about August 17, 1953, and that it was distributed by the Employer to the employees.

Mr. Atwood: All right.

Trial Examiner: The stipulation will be received.

Mr. Wilson: I propose a stipulation that General Counsel's Exhibit 11-B for identification was distributed by being passed out to employees at NuTone by the Employer, NuTone, on or about August 18, 1953.

The Witness: That August 18th, I couldn't agree with that.

Trial Examiner: Just a moment, now. Let's reach a stipulation off the record, gentlemen, if we are going to have one.

Mr. Wilson: May we be off the record?

Trial Examiner: Yes.

(Discussion off the record.)

215 Trial Examiner: On the record.

Mr. Atwood: The Respondent will so stipulate.

Trial Examiner: We have a stipulation on 11-A and B, right? —The stipulation will be received.

Mr. Wilson: May I check to make sure that we have the date in that stipulation, sir?

Trial Examiner: August 18th.

Mr. Wilson: Thank you, sir.

I propose a stipulation that General Counsel's Exhibit 11-C for identification was distributed by the Employer to

the NuTone employees by being passed out on or about July 27, 1953.

Mr. Atwood: It is so stipulated.

Trial Examiner: "Passed out," that's a little indefinite.

Mr. Wilson: By pass out, General Counsel has meant when he's used that phrase in the proposed stipulation, and the accepted ones, that the literature was physically handed to employees in the plant by supervisory personnel.

Trial Examiner: Is that acceptable?

Mr. Atwood: Yes.

Trial Examiner: The stipulation will be received.

Mr. Wilson: And we mean particularly also that by being passed out, passed out as distinguished from being mailed.

Mr. Atwood: That's satisfactory.

Trial Examiner: All right.

Mr. Wilson: I propose a stipulation that General
216 Counsel's Exhibit 11-D for identification was distributed by being passed out to NuTone employees by NuTone on or about July 31, 1953.

Trial Examiner: Passed out where?

Mr. Wilson: At the plant. It is further a part of all stipulations so far proposed by me, or which I now propose, that—I propose as a part of that—that such passing out and distribution took place at the plant on Company property.

Mr. Atwood: Correct.

Trial Examiner: The stipulation will be received.

Mr. Wilson: I don't know whether I completed the stipulation, proposed stipulation, with respect to 11-D.

Trial Examiner: I think so. July 31st?

Mr. Wilson: Yes; all right.

I propose a stipulation that General Counsel's Exhibit 11-E for identification was passed out by the Employer to NuTone employees on Company property on or about June 23, 1953.

Mr. Atwood: It is so stipulated.

Trial Examiner: The stipulation will be received.

Mr. Wilson: I propose a stipulation that General Counsel's Exhibit 11-F for identification was distributed by being passed out to employees on Company property by NuTone, on or about June 12, 1953.

Mr. Atwood: It is so stipulated.

Trial Examiner: The stipulation will be received.

Mr. Wilson: I propose a stipulation that General
217 Counsel's Exhibit 11-G for identification was distributed by being passed out to employees on Company property by the Employer on or about—

May we be off the record for a moment, sir?

Trial Examiner: Yes.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Wilson: On or about approximately one week prior to August 19, 1953.

Mr. Atwood: It is so stipulated.

Trial Examiner: The stipulation will be received.

Mr. Wilson: I propose a stipulation that General Counsel's Exhibit 11-H for identification was distributed by the Employer to NuTone employees by being passed out to them on Company property on or about July 29, 1953.

Mr. Atwood: It is so stipulated.

Trial Examiner: The stipulation will be received.

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218 Mr. Wilson: I offer in evidence General Counsel's Exhibits 11-A through 11-H for identification.

Trial Examiner: Any objection?

Mr. Atwood: None.

Trial Examiner: It will be received.

* * * * * * * * * *

219 Mr. Wilson: I propose a stipulation that General Counsel's Exhibit 12-A for identification was mailed by the Employer Respondent to NuTone employees, on or about August 11, 1953.

Trial Examiner: Any objection?

Mr. Atwood: He was going to go through the whole set.

Trial Examiner: All right, go ahead; we will save time.

Mr. Wilson: It is part of the same proposal that General Counsel's Exhibit 12-B for identification was mailed by Respondent to NuTone employees on or about sometime between June 12 and August 19, 1953.

220 That General Counsel's Exhibit 12-C for identification was mailed to NuTone employees by Re-

spondent NuTone on or about in the very latter part of July, 1953.

That General Counsel's Exhibit 12-D for identification was mailed to NuTone employees by the Respondent NuTone on or about June 12, on or about or during the period extending from June 12, 1953, to August 19, 1953.

That General Counsel's Exhibit 12-e for identification was mailed by the Respondent to NuTone employees on or about June 12, 1953.

And that General Counsel's Exhibit 12-F for identification was mailed to NuTone employees by the Respondent on or about August 2, 1953.

That General Counsel's Exhibit 12-G for identification was distributed by the Respondent by mail to NuTone employees on or about August 13, 1953, it being understood that both General Counsel's Exhibit 12-G for identification and 12-F for identification when mailed were mailed from the home of the president, J. Ralph Corbett.

That General Counsel's Exhibit No. 12-H, which consists of one single sheet, yellow in color, and to which are attached two letters, was mailed by the Respondent to its employees on or about August 12, 1953.

And that General Counsel's Exhibit 12-I for identification was mailed by the Respondent to the NuTone
221 employees on or about the latter part of July, 1953.

Do you so stipulate?

Mr. Atwood: I will so stipulate.

Trial Examiner: The present stipulation relates to Exhibits 12-A through 12-I, inclusive?

Mr. Wilson: Yes, sir.

Trial Examiner: The stipulation will be received.

Mr. Wilson: I offer General Counsel's Exhibits 12-A through I for identification in evidence.

Trial Examiner: Any objection?

Mr. Atwood: None.

Trial Examiner: They will be received.

* * * * * * * * * *

224 Mr. Wilson: I propose a stipulation that General Counsel's Exhibit 13 for identification was mailed by the Respondent to its employees from the home of the president, J. Ralph Corbett, on or about August 9, 1953.

Mr. Atwood: It is so stipulated.

Trial Examiner: The stipulation will be received.

Mr. Wilson: In connection with this exhibit, may I at this time call to the attention of the Trial Examiner the fourth paragraph, towards the last of it; or first may I offer General Counsel's Exhibit 13 for identification in evidence?

Trial Examiner: Any objection?

Mr. Atwood: None.

Trial Examiner: It will be received.

Mr. Wilson: That part of the paragraph which reads, "We can have our own grievance committee if you want to, and settle our own quarrels without outsiders interfering."

(The document heretofore marked General Counsel's Exhibit No. 13 for identification, was received in evidence.)

* * * * * * * * * *

225 Mr. Wilson: I have marked for identification General Counsel's Exhibit 14-a.

Q. (By Mr. Wilson) You are familiar with that, are you not, Mr. Mann? A. Yes, sir, I have seen it.

Q. Earlier in your testimony you testified about literature which had been mimeographed by you, or NuTone, for the NuTone employee relations committee. Is General Counsel's Exhibit 14-A one of such pieces of literature? A. That we mimeographed?

Q. Yes. A. Yes, we mimeographed this for them, for this group of people.

Q. And you mimeographed that at the request of Mr. Vaught? A. At the request of this committee.

Q. And you caused General Counsel's Exhibit 14-A for identification to be distributed to the employees in the plant, did you not? A. Yes.

226 Q. And t at was distributed in the usual way in which the Company distributes literature throughout the plant? A. I believe this was, yes.

Mr. Cassidy: May we have the exhibit identified?

Trial Examiner: What is the date of that?

Mr. Wilson: September 22, 1953.

Mr. Cassidy: Which is it?

Mr. Wilson: Oh, sure (document shown to counsel.)

Q. (By Mr. Wilson) And that was mimeographed by the Company and distributed as you have testified on or about September 22, 1953? A. Yes, sir.

Q. I realize you testified generally about this literature before, but I would like you to be specific with the permission of the Trial Examiner.

Nobody paid the Company for this work of mimeographing? A. No.

Q. And the Company supplied the paper, is that not so? A. Yes.

Q. You had a discussion with members of the committee about, or the temporary committee, about setting up such an organization as they desired to have, did you not, prior to the time that GC-14-A for identification was distributed? A. They informed us that they were going to, that they had set up such a committee.

227 Q. And they told you, did they not, that they wished to set up an employee relations committee to handle such grievances as might come up, and to work matters out with the Company? A. I don't think they said, used grievances, as I recall.

Q. What did they tell you they wanted to do? A. That they were going to set up an employee relations committee

* * * * * * * * * *

Q. (By Mr. Wilson) And they told you, did they not, they wanted to set up an employee relations committee to deal with the Company, and thereby improve relationships between the Company and the employees? A. They said, to make, used the term, "Make NuTone a better place to work."

* * * * * * * * * *

228 Q. (By Mr. Wilson) So that we can have the picture straight, first a temporary committee came and visited with you and told you that they wanted to form an employee relations committee and wanted to have the cooperation of management in setting up such an employee relations committee; is that not so? A. Well, they told us they were going to do that.

Q. All right; and they told—and, in fact, they told you that they would like to have you print some literature for

them? A. Not at that time. At a later time they requested that we print the literature for them.

Q. All right. And they told you they wanted to
229 have an election in the plant, did they not? A. Yes.

Q. And you told them you would do that, did you not? A. Told them that we would—they asked us to print the literature and distribute it for them, which we agreed to do.

Q. And they told you they wanted to have an election in the plant, did they not? A. Yes.

Q. For the purpose of having a permanent committee of the Employee Relations Committee elected and set up? A. An employee committee, yes.

Q. All right, now, 14-B for identification, NuTone printed or mimeographed General Counsel's Exhibit 14-B for identification at the request of this temporary committee, did they not? A. Yes.

Q. And again the paper was supplied by NuTone? A. Yes.

Q. And the mimeographing was done without charge by NuTone for this employee committee? A. Yes.

Q. And the ballots were distributed throughout the plant by—Withdraw that. The ballots were distributed throughout the plant in the same way that General Counsel's Exhibit 14-A for identification was distributed, namely the usual manner that the Company literature was dis-
230 tributed; is that correct? A. Yes.

Trial Examiner: Is 14-B a ballot?

Mr. Wilson: Yes, sir.

Trial Examiner: Is that correct, Mr. Witness?

The Witness: Yes, I would call it that, sir.

Q. (By Mr. Wilson) And General Counsel's Exhibit 14-C for identification, which I show you, was prepared by the Employer at the request of the elected NuTone Employees—NuTone Employer— Withdraw that. Forgive me, sir.

General Counsel's Exhibit 14-C for identification was prepared by the Company at the request of the elected NuTone Employee Relations Committee; is that not so? A. Is that not so, or is that so?

Q. Well, is it or not so? Is it so or is it not so? A. Well, it means something different, you understand.

Trial Examiner: Is it so?

The Witness: Yes.

Q. (By Mr. Wilson) And, again, the paper was supplied by management? A. Yes.

Q. And the mimeographing was done for this NuTone Employee Relations Committee free of charge; is that correct? A. Yes.

Q. And General Counsel's Exhibit 14-C for identification was distributed by NuTone in the same fashion as it
231 distributed General Counsel's Exhibit 14-A and B for identification? A. Essentially the same fashion.

Mr. Wilson: I offer General Counsel's Exhibits 14-A through C for identification in evidence.

* * * * * * * * * *

Mr. Wilson: I withdraw that. I assume General Counsel's Exhibits 14-A through C have been received, have they not?

Trial Examiner: They have. I received them.

* * * * * * * * * *

237 Q. Do you recall that when you and Mr. Corbett met with this group of about 30 for the first time that Mr. Corbett told this group of about 30 that they could meet with Mr. Mann, meaning you, from time to time, to take up their problems and that if necessary, they
238 could meet with him? A. He made a statement to the effect that they could meet with me and talk to me and that he would talk to them if they so desired.

* * * * * * * * * *

241 Q. (By Mr. Wilson) Thereafter, or after the election, from time to time the NuTone Employee Relations Committee met in the company cafeteria to conduct its affairs, did it not? A. Did it? Yes.

Q. And those meetings were conducted at least partly from time to time— A. At least what?

Q. Partly, from time to time, on company time, is that not so?

* * * * * * * * * *

242 The Witness: Yes.

Q. (By Mr. Wilson) And, of course, employees are paid as you have already testified to, for company time, is that not so? A. That is so.

Q. You have already testified, I believe, that you have met with this committee on some two or three occasions? A. Yes.

Q. Can you be a little more specific and say whether it was two times or three times, or more than that? A. I can be specific as to three times, possibly four.

* * * * * * * * * *

244 Q. All right, and when was the first one, about?

A. The first one was there, I suppose it was their first meeting and they had asked me and Mr. Corbett to come in on their meeting, which we did, I believe, well, one of the group did get up and say that this was their committee that had been elected, and asked Mr. Corbett if he had anything to say, and he did talk to them, he mentioned a new shelter house, bus shelter, that had been constructed or was being constructed for their comfort. He talked about quality of his products again. At that time, that is all I can remember.

Trial Examiner: Is that when he stated his gripes?

245 The Witness: Sir?

Trial Examiner: Is that when he stated his gripes?

The Witness: I don't recall him mentioning the word "gripes", sir. He did not, to my knowledge, mention gripes.

Trial Examiner: Was he complaining about the quality of the products?

The Witness: No, he was mentioning some of the problems we had with our competition, quality and price, meeting our competition.

Trial Examiner: All right.

Q. (By Mr. Wilson) Do you remember Ira Rose asking about forming a credit union? A. Yes.

Q. At what meeting was there a discussion between this NuTone Employee Relations Committee and management with respect to setting up a credit union? A. Ira Rose mentioned that in this meeting that I am speaking of. There was no discussion on it.

Q. The first meeting? A. Yes.

Q. Do you remember Willie Fore, do you remember him bringing up the subject of a couple of exhaust fans that didn't function properly? A. Yes.

Q. What was discussed about them that you can
246 recall? A. No discussion that I can recall.

Q. Well, you remember he pointed out that the committee had found there were a couple of exhaust fans that weren't working properly, and they would appreciate it if they would be put in shape? A. No, he didn't mention the committee found it, he mentioned that existed where he had been working.

Q. What did he want them to stay, not functioning properly or did he want them to function properly? A. He felt that they were not functioning properly, and should be made to function properly.

Q. And did you agree to make them function properly, or didn't you? A. No agreement was made.

Q. You just discussed it? A. No, no discussion was made. He mentioned it, I made a note of the fact that the fans were not functioning properly, and that's all.

Trial Examiner: Did you do anything about it?

The Witness: I didn't no. My—

Trial Examiner: Did you pass your note to someone to do something about it?

The Witness: Yes, to the maintenance foreman and then some individual complaints came in before they were finally repaired.

Q. (By Mr. Wilson) The fact is that you brought
247 it to the attention of a foreman who tried to get it fixed, is that right? A. The maintenance foreman.

Q. Maintenance foreman who tried to get it fixed, is that correct? A. Yes.

* * * * * * * * * *

355 **John Elmer Daum,**

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * * * * * * *

Q. (By Mr. Wilson) By whom are you employed? A. NuTone Incorporated.

Q. And for how long approximately have you been so employed? A. Approximately four years.

Q. Do you recall a National Labor Relations Board election that was held on August 19, 1953? A. The date I won't verify, but I do remember the election.

Q. Prior to that time were you familiar with a group of employees who referred to themselves as Nutoners for Nutone? A. Yes.

Q. Were you active on behalf of such group? A.
356 Yes.

Q. Could you tell us whether or not the Nutoners for Nutone were also sometimes known as the Loyalty group? A. Well, that's a little awkward to answer. I'll do it to the best of my ability. We started out as Nutoners for Nutone, lacking a better name, but it got to a place we called ourselves the Loyalty group.

Q. And prior to the election will you tell us whether or not the Nutoners for Nutone or Loyalty group actively campaigned against the Steelworkers? A. We campaigned against a union organization coming into our plant, yes.

Q. Would you say that you were one of the more active members of that group or were you just part of the group? A. Well, I instigated it and was active.

* * * * * * * * * *

357 Q. (By Mr. Wilson) After the election will you tell us whether or not you became familiar with a group which was known as the Temporary Com-
358 mittee? A. Yes.

Q. Will you tell us what connection you had with the Temporary Committee? A. Well, a sort of a co-sponsor or co-chairman.

Q. Along with whom else? A. Whitey Vaught, Arline Lindley and I believe Juanita Griffith.

Q. As one of the organizers or co-sponsor of this Temporary Committee will you tell us whether or not you undertook to form a permanent committee in more or less democratic fashion to take employee grievances to the director of industrial relations? A. We made plans and had a democratic election.

Q. And as part of such plans and in an attempt to bring such plans to fruition did you or did you not have an election wherein General Counsel's Exhibit 14-b which I hold in my hand was used as a ballot? A. That looks—

Q. You may look at it, of course, sir (handing). A. This looks like the one, um-hum.

Q. And as a result of that election conducted for the purpose that you have indicated did the NuTone employee relations committee come into existence? A. Yes.

Q. And it was part of your plan and through this balloting was that part of your plan put into effect to have one representative from each department elected to the permanent committee? A. Well, that wasn't part of our plan. It was agreed it would be a sensible thing to do.

Q. And this election that we've been talking about was for the purpose of electing one representative from each department? A. Yes.

Q. To be on the committee that you've referred to? A. Right.

Q. And will you tell us whether or not it was further part of your plan as a co-sponsor of this temporary committee to form a committee, permanent committee to discuss with the director of labor relations Henry Mann wages, working conditions and incentive standards? A. No, we didn't get that far.

Q. Well, I'm not asking you whether this committee actually ever did discuss such things. I am asking you whether or not it was the plan of the temporary committee in establishing or having established the permanent committee to have a committee which could and would discuss with the director of labor relations Henry Mann wages, working conditions and incentive standards. A. Well, we didn't discuss standards, but we did say grievances or things that we didn't think were fair.

* * * * * * * * * *

Q. (By Mr. Wilson) Do you now remember that at the time you signed General Counsel's Exhibit Number 20 for identification it stated, "It is the intention of the committee to take employee grievances to the Director of Labor Relations Henry Mann and discuss wages, working conditions and particularly incentive standards with said Mann"? Can you remember that that was in here when you signed it? A. At the time I certainly must have or I wouldn't have signed it.

* * * * * * * * * *

369 **Virgie Marshall.**

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * * * * * * * * *

425 Q. As I understand it, there had been no distribution of union literature before June 9? A. We had signed some cards, but there had been no distributing of literature at the plant.

Q. Yes. And the first distribution occurred on the 11th? A. Yes, sir.

Q. That's when you were there? A. I was there
426 in Bob Lamons' car.

Q. Yes, but you didn't distribute any? A. No, sir, not that day I didn't.

Q. And no employee of the Company distributed any that day? A. No, sir.

* * * * * * * * * *

427 **Della Puckett,**

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * * * * * * * * *

442 Cross Examination

* * * * * * * * * *

447 Q. Did you pass out any literature for the Steelworkers? A. You mean after I was laid off?

Q. Yes, ma'am. A. Yes, sir.

448 Q. Did you pass it out outside the plant? A. Yes, sir.

Q. And where did you pass it out?

Mr. Wilson: I object, Mr. Trial Examiner, unless we have a time fixed.

Trial Examiner: Will you fix the time, please, sir?

Q. (By Mr. Atwood) Did you pass out literature between June 11 and August 19? A. Yes, sir.

Q. Did you pass out literature between August 1 and August 19? A. Yes, sir.

Q. Where did you stand ordinarily when you passed out the literature between August 1 and August 19, 1953?

Mr. Wilson: I object, Mr. Trial Examiner; irrelevant, immaterial.

Trial Examiner: I'll hear from you, Mr. Atwood.

Mr. Atwood: It again is related to my defense.

Trial Examiner: Well, there's been no defense indicated at this time that bears any relation to that subject-matter.

Mr. Atwood: Well, may I have the same ruling with respect to Mrs. Della Puckett as I have had with respect to Virgie Marshall?

Trial Examiner: You may call her when your case is going in. I'm not sure that that would make it any
449 more relevant then. We'll just have to await developments. But you have the option of calling her then if you wish.

* * * * * * * * * *

739 **Charlotte Puckett**

a witness called by an on behalf of the Respondent as if upon cross-examination, being previously duly sworn, resumed the stand, was examined and testified further as follows:

Cross-Examination

* * * * * * * * * *

740 Q. In the period between approximately August 1st and August 19th did you pass out literature for the Steelworkers at the NuTone plant? A. I did.

Q. Did you do that frequently? A. What do you mean?

Q. Whenever there was literature passed out did you pass it out? A. I mean I was out there with them.

Q. While you passed out the literature where did you usually stand with relationship to the parking lot, toward Madison, or did you stand on the Red Bank side of the plant? A. I stood over at the corner of the parking lot by the gas station most of the time.

1043 **General Counsel's Exhibit 6**

August 5, 1953

RULE ABOUT USING COMPANY PROPERTY

It must be understood throughout the entire plant that the company does not permit posting of signs—of any kind—on company property. I would appreciate it if *all* employees—regardless of how they feel on the union issue—would avoid attaching signs to company property.

Wherever we find them—we will be compelled to destroy such signs.

NuTone, Inc.

1044 **General Counsel's Exhibit 7**

To: All Foremen August 10, 1953

Subject: Rule About Soliciting And Campaigning on Company Time.

It must be understood by all employees that the company does not permit soliciting and campaigning on company time. This applies to both sides of the union issue. Such activity must be confined to the employees' own time.

NuTone, Incorporated

1045 **General Counsel's Exhibit 8**

To: All Foremen August 12, 1953

Subject: Rule about passing out literature on company property.

This is a warning to all employees—whether they are for or against the union—that the company does permit employees to pass out handbills or other literature on company property. People who engage in such activities must stay outside of the company property line which is the inner edge of the sidewalk.

Will you please post this notice in your department.

Henry Mann
Henry Mann
Director of Industrial Relations

Do You Know This TRUTH about...

STRIKES

Everyone knows that strikes can ruin your family! This Steelworker's Union is famous for long and costly strikes. We have the records to prove it.

Don't forget--you may be paying on a house, a car, furniture or a T.V. set. Steady work at NuTone gives you the money to take care of your family.

DON'T LET THESE UNION BOSSES WRECK YOUR FAMILY!

NuTone, Inc.

PLEASE READ CAREFULLY THIS ATTACHED LETTER ON WAGES!

Remember that wages means *all* money you get from NuTone. It means your hourly rate *plus* the incentive bonus. You have to add *both* of them together—and that makes your total rate. These CIO Union people *don't like* incentive bonuses. Very few union shops *anywhere* pay incentive bonuses. They certainly don't pay incentive bonuses in the big steel mills of Pittsburgh—or Newport, Kentucky. That's where this CIO Steelworker Union has most of its members.

Some people have asked us why a few NuTone Departments pay different bonuses than others. The answer is that Punch Press work is more *risky*—so they get higher bonus. *Anyone* at NuTone can always ask for a transfer to Punch Press Department if they want that work. The same for Spot Welding and Paint Department. You can always get a transfer to these departments.

Now—about Grievance Committees. Ask anyone in Punch Press department—and they'll tell you—they had a Committee of 8 men and women (night and day shifts)

that met twice with us. I was at the first meeting. Then all 26 Punch Press people met with us—because they thought a few incentive rates were "close" and *we changed the rates at their request*: We also offered them a *high* flat rate per hour—instead of incentive—if they wanted it that way. They said NO—they were satisfied with their checks—and didn't want to change the incentive pay. We met the whole Punch Press Department *at their request*—within a few hours after they asked for a meeting. Do you call that a "phony grievance committee"—like these 3 CIO girls wrote you?

Now—about Seniority—ask the Union organizers if it isn't true that most Union kind of seniority *goes only by departments.* If there's no work in one department in a Union shop—*everyone* in that department is laid off. At NuTone—we transfer people to another department—from Chimes to Fans or from Fans to Chimes—to keep them busy. And we give them a *guaranteed bonus* in their new work—until they make the same average pay they earned in their previous job. *That's true seniority!*

Everyone know that anytime our employees want to form a Grievance Committee to hear complaints—they could choose their own Committees. A few weeks ago—when the employees in Shipping and Packing Departments signed a petition that they needed a water fountain—they got that fountain in *one day!* That's the way we listen to our employees at NuTone.

NuTone, Inc.

1055 LOOK AT YOUR PAY CHECKS — THEY ARE HIGHER THAN C.I.O. FACTORIES DOING WORK LIKE NUTONE!

This letter is about wages. You have been told many untruths about wages . . . here are the facts.

1. The Truth About the Newport Steel Company

These CIO Union people told you—in one of their circulars—that Newport Steel Company paid their workers $1.52 an hour. But—they didn't tell you that there are no women working in that plant—and that they are all men who do hot and heavy steel manufacturing

work. They also didn't tell you that there was an *11-week strike* at Newport Steel—and their $1.52 an hour pay dropped down to $1.20 an hour—when you figure the money they lost during those 11 weeks.

2. Punch Press

The Grote Mfg. Co., of Bellevue, Kentucky, is a C.I.O. Steelworker factory. They pay their Punch Press operators $1.26 to $1.36 an hour. This is $50.40 to $54.40 gross weekly pay. It is less than that—after the Government taxes are taken out. Our NuTone Punch Press operators make so much more money than these CIO punch press people—there is absolutely no comparison! You NuTone Punch Press operators know this to be the truth. *Look at your pay check* and see how much more money you make.

3. Spot Welders

This same Grote Mfg. Co. in Kentucky pays their Spot Welders $1.21 to $1.31 an hour. This is $48.40 to $52.50 gross weekly pay. It is less than that—after the Government taxes are taken out. These CIO Spot Welders do the same kind of spot welding that our men do. Let our NuTone Spot Welders answer this question—*How much more do you make* than the Spot Welders in that CIO factory? *Look at your pay check* and *see* how much more money you're making!

4. Paint Department

And now—about our Paint Department. The CIO Steelworkers can't name a company in all of Cincinnati—doing work similar to NuTone—where the Spray Painters make as much money a week as our NuTone Painters. We say this to our Paint Department employees . . . *Look at your pay check* and see how much more money you're making!

5. Assembly Department

The employees in our Assembly Department also make good money—and they know it. The RCA factory (CIO) right near here—start their girls at $1.08 an hour and NO BONUS. That's $43.20 gross weekly pay. And it's

less than that after the Government taxes are taken out.

Our Assembly girls make more than $43.20 a week—
1056 *even our new girls know that.* It takes RCA Assembly girls a long time to make anything near the money that our experienced NuTone Assembly girls make and our girls don't have to pay $36.00 a year Union dues.

Remember this—because it's very important—It's an old trick of these CIO Union people to compare your wages with *different kinds of factories* that don't do the light manufacturing work that NuTone does. How can the Union compare rates with the *heavy work in steel mills—or machine tool plants—or heavy machinery factories—* with the rates in our kind of company?

We make Chimes and Kitchen Fans at NuTone. THERE ISN'T A CHIME OR KITCHEN FAN MANUFACTURER IN THE UNITED STATES WHERE THE WORKERS MAKE AS MUCH WEEKLY PAY AS NUTONE.

Let this CIO Steelworker Union tell you whether or not they got raises for the workers at American Laundry Machine Company and Cincinnati Metalcraft! They organized these 2 plants and then called the workers out on long strikes. They not only *didn't* get raises for these workers—they don't even have signed contracts at either of these two factories today!

NUTONE, INC.

1057 **General Counsel's Exhibit 11B**

"THOU SHALT NOT BEAR FALSE WITNESS"

These 3 CIO girls don't know the meaning of the above. We said that we would pay them $1,000. in cash—if they could prove that there was even *one* woman factory worker in that Los Angeles Woodworking plant. We'll pay them another $1,000. if they can prove that there wasn't an election—with the AFL Union—in the NuTone plant on Eggleston Avenue—in November, 1941. The absolute proof that they're again telling you another falsehood is the following list of NuTone employees *who are now working in our factory* . . . all of them were at this 1941 National Labor

Relations Board Election (AFL) and voted in that election. Ask them!

Name	*Dept.*	*Name*	*Dept.*
Ollie Kinsel	Chimes	Red Haney	Fan
Alma Patton	Chimes	Bob Schaefer	Display
Margaret Hamlin	Chimes	Bernice Clifton	Repair
Martha King	Chimes	Rhoda Rich	Repair
Laura Kleeman	Chimes	Harvey Hurd	DiNoc
Rose Haney	Chimes	Arlene Lindley	Quality Control
Carlyn Essert	Chimes	Raymond Wiedmeyer	Maintenance
Mary Eads	Chimes	Bob Hanson	Maintenance
Myron Theetge	Chimes	Bob Bergman	Punch Press
Ruth Sharpe	Chimes	Ken Yancey	Production
Goldie Brown	Chimes	Bernie Gray	Shipping
Stella Millichamp	Chimes	Eleanor Dick	Defense
Mildred Klein	Billing	Dollie Clarkson	Defense
John Baker	Paint	Pat Brannen	Defense

We beat the Union—6 to 1—at that Election!

I am now telephoning the Department of Labor, in Washington, D. C.—to get the exact day the election was held and the exact number of votes cast for both sides.

The Vacation checks of these 3 CIO gals—were for *2 weeks.* We told you that in our letter. Their Vacation checks were given out at the same time most of you got your Vacation checks.

Now—you don't have to feel sorry for these 3 poor girls! Somehow they were able to "struggle along" on the following checks they got in April—when everyone in their department was earning good money—just before we ran short of steel.

		Date of Check	Amount
	VIRGIE MARSHALL	April 4	$64.61
		11	66.69
		18	65.99
		25	59.63
1058	DELLA PUCKETT	April 4	$55.18
		11	53.74
		18	53.74
		25	56.36
	CHARLOTTE PUCKETT	April 4	$60.02
		11	57.32
		18	56.06
		25	52.59

> These girls had Seniority—and their pay checks show that they were making good money. Most of our girls with Seniority are taking home good pay checks—just like these 3. Even the newer girls—because they are quickly learning to make good incentive bonus—have the same chance to make good money at NuTone.

At the bottom of page 1—in the circular they handed you this morning—they told another falsehood about our Life Insurance. Here is what they said:

> "Employees with about 8 years seniority have only about half of that $5,000.00."

How can they have the decency to look you in the face—when they hand out these circulars and tell such a terrible falsehood? *Every single person who now works at NuTone* —and who has been here 90-days or more . . . has $2,500.00 Life Insurance—and they have their Prudential policy!

On the Bulletin Board, near the Lunch Room, is a list of 140 people who now have $3,000. of NuTone Life Insurance. Each year we automatically add $500. Insurance to everybody in the factory. In four years the persons having $3,000. will have $5,000. Life Insurance. Those now having $2,500.—will in a short time have $3,000. Everybody now working in the plant will have $5,000. worth of Insurance between 4 and 5 years from today. The 3 CIO gals said it takes 8 years to get even $2,500. Insurance.

They told you this morning that you pay $3.80 for Hospital Care—for your share of the Family Policy. They're wrong again! You pay only $3.08—and NuTone also pays $3.08—towards your Family Policy. These 3 girls ought to go back to school and learn their arithmetic.

They ended their letter by picking the name of a girl who was laid off. This girl had one of the worst cases of 'absenteeism' in the NuTone plant. She was warned lote of times about this absenteeism. She was absent about 19½ days in 1952—without proper excuse. These absences took place during many weeks of the year—until the head of her department said they couldn't depend on her coming in to work when she was needed. That was the real reason why she was let go.

NUTONE, INC.

1062 **General Counsel's Exhibit 11F**

NUTONE, INC.

June 12, 1953

A Special Message from Ralph Corbett
to Every Nutone Worker

I was greatly surprised to learn Thursday afternoon that a local union organization distributed a misleading announcement to our people. They have a right to tell you the truth—but, they have no right to spread a pack of lies and that is why I'm going to answer their June 11th circular. Let's take their statements one by one and look at the facts.

1. They said that NuTone has a "gestapo attitude" regarding your right to join any union.

   First of all—up to 4:30 P.M. yesterday afternoon we had no knowledge of any unionizing activity in our plant. I will let *you* judge whether you think NuTone ever adopted a "gestapo attitude" to any NeTone worker on the subject of joining—or not joining—a union. You know me well enough to judge whether my character is as bad as the union people tell you.

2. They said that lots of our people have already become members of their union and you should not be "one of the last ones to come in".

   Don't be fooled by that kind of falsehood. If they had the number of members that they claim—they would have made official claim to that fact long ago. Don't be scared by wild statements which they cannot back up.

3. They said NuTone is "twenty years behind in rates of pay, working conditions, vacations, job security and seniority".

   You know that these are just a pack of lies. The weekly pay envelope of our people is as good or better than similar plants in the city of Cincinnati. Look at your weekly pay check and compare the amount with other people in Cincinnati plants of our type and you will quickly detect union lie No. 1. The working conditions in the NuTone plant are as good as any factory in the

City of Cincinnati. Does anybody have a finer lunchroom than ours? Isn't it true we have an expensive air-cooling system in that lunchroom? Does any plant in town have any better equipped and cleaner washrooms than
1063 ours? How many small plants of our size have a registered nurse to take care of their people during working hours—free of any charges?

As to vacations—NuTone started the policy of giving its employees paid vacations when we went into business 15 years ago—long before any union ever claimed they could help *you* get such vacations. They also told a lie when they said that we cheat anyone out of vacation pay. It has been our policy for many years that a person who has been with NuTone for a minimum of a year, up to June 1st of each year—is entitled to a week's vacation with pay. After 5 years they receive two weeks vacation with pay. It is our policy that if any hourly paid worker was laid off—due to lack of work or lack of materials—if they were entitled to vacation—they would still be paid for that vacation—even if they were laid off. Those hourly paid workers whom we were forced to give a temporary lay-off after June 1st—whether or not we call them back before vacation time—will still receive their vacation pay. This does not apply if the employee voluntarily quits or is discharged for cause.

As for cheating anyone out of his Christmas bonus—you know how big that lie is. We have been giving generous Christmas bonuses for 15 years—and this Christmas bonus has *always* been based on *seniority*. Can you name me *one person* whom NuTone ever cheated out of a bonus?

These union people also said, in their June 11th letter, that "you are just as good as Mr. Corbett and are entitled to be treated the same". I'll let you be the judge as to whether I have ever knowingly hurt anybody's feelings in this factory—whether it be a boy who sweeps the floor—or the highest paid worker. You know that I have been most anxious about the welfare of you and your family—during sickness and during times of need. You know that I have tried to be your friend and have never mistreated a single one of you.

5. The union people tell you that "you have a right to join a union". Of course you have. But do they tell you—you also have a right *not* to join a union—if you don't want to. There is no law that says that you can't make up your own mind on this subject,—without outsiders telling you what you have to do.

You'll notice that these union people are trying to rope you in with promises that "there will be no charge to join the union". But, do they tell you that it will cost you $36.00 a year in dues—after you join? Do they tell you anything about other fees, assessments and fines which these unions make? Also, do they tell you that they have been responsible in many cases for ordering strikes which were unpopular with the workers and caused great hardship and suffering to workers and their families? Remember—one of these strikes right here in Cincinnati—lasted 64 days—over 3 months of working days—causing many families hardships and losses which they won't get over for a long time.

Our NuTone workers have never been denied an opportunity to make a complaint to their foremen or factory superintendent or to me—and this policy still prevails.

Everyone here knows that we pay quick attention to
1064 anybody's complaint or grievance and try to settle it at once, and fairly. What can the union do for you that you can't do for yourself at NuTone? The answer is they want to take $36.00 a year from you and perhaps lose you a lot of working days—when they cause disputes of one sort or another.

Don't be frightened or misled! Remember that NuTone grew to its present size by being willing to re-invest every dollar we've made and put it back into the company—and to give our workers security and a chance to grow with the company, year after year.

I'll leave it to you as to whether you think I am as bad a person as these fellows try to paint me. What do you think?

Sincerely,

J. Ralph Corbett
J. Ralph Corbett
President

YOU LOSE with C.I.O. STEELWORKERS UNION

STEELWORKERS UNION

1. **YOU LOSE SECURITY**
   – because of long STRIKES.

2. **YOU LOSE part of your PAY**
   – $36 a year plus assessments and fines.

YOU WIN with NuTone

1. **YOU WIN the same kind of CHRISTMAS BONUSES**
   . . . which NuTone has been giving for years. (remember 14 out of 19 CIO Cincinnati Factories give nothing for Christmas)

2. **YOU WIN on INSURANCE**
   – because NuTone gives you up to $5,000 Life Insurance. (C.I.O. Factories in Cincinnati give as little as $1,000 . . . one of them gives NO LIFE INSURANCE)

Vote NO

NO . . means NO lost wages

NO . . means NO picketing

NO . . means NO Union Dues – NO fines, NO assessments

NO . . means NO hatred among Employees

NO . . means NO outsiders pushing you and telling you what to do

NO . . means NO UNION

BE SURE TO MARK AN X UNDER NO

Don't write your name or anything else on the ballot.

To be valid your ballot must be marked – an unmarked ballot does not count.

A majority of the valid ballots determine the election.

1069 **General Counsel's Exhibit 12C**

ANSWERS TO FIVE UNION LIES

You veterans of World War II—remember that crazy Hitler said that if you tell a lie often enough—*some* people will believe it. It's hard to keep these Union bosses from telling lies. So we must answer their Tuesday night, August 11th, circular.

Union Lie Number 1

About vacation pay . . . They say we beat our employees out of their vacations.

The company rule . . . during *all* the years we have been in business—is that employees who have been with us for one year up to June 1st of every year—get *paid* vacations. Every person who was entitled to a vacation this year *got their paid vacation.* In fact—the 3 women who were laid off on June 9th—the ones the Union is talking about—also got their vacation pay.

Take a look at the copies of their 2-week vacation checks—after Government Tax and other deductions. There's the proof. See *their own endorsements* on their vacations checks!

Union Lie Number 2

They said we laid off 3 women who had seniority and didn't call them back to work. *Here are the facts.*

These 3 women worked on a chime model which had a big drop in sales. Early in June—we had thousands of these models in the stockroom. We laid off that whole line and later on called them all back to work. Then we called back *one* of these 3 women—sent her a Registered letter saying we expected to hear from her by a certain date. She didn't answer our Registered letter—until many days after the time we told her. Meanwhile—we hired someone else in her place.

In the case of the other 2 girls who were laid off—we decided not to take them back—for reasons which, at the proper time, we will tell the National Labor Relations

Board. This reason has nothing to do with their interest in a union.

* * * * *

Examine these checks . . . See the endorsements on other side.

1071 They said we hired new employees to take their places, that same week. We checked our Employment Records and found that one woman was hired in *Punch Press* Department and another in the Altimeter Defense Repair Department—but *nobody was hired that week in the Chime Department where these women had worked.*

Union Lie Number 3

They said we hire a lot of new employees during the rush season and lay them off between Thanksgiving Day and Christmas.

Now—here are the true facts! During the 16 years of NuTone—we always have temporary employment during November and December,—for a few people who want to earn some extra money for Christmas. Most of the people who take those *temporary* Christmas season jobs are friends or relatives of workers in our plant. They know the work is temporary—In fact, they don't want permanent work—because many of them have families and they refuse permanent work.

Now listen to these facts! Last Christmas we had 108 such *temporary* workers—who worked one to three months—up to the middle of December. *Each and every one of these temporary people got a $10.00 check for Christmas—even tho' some were working only a few weeks.* They got their Christmas check on December 20th, 1952. We told everyone on this temporary list of workers—that if they wanted permanent work we would welcome them to NuTone. *And* 78 stayed with us!

Now—here's the proof that the Union people have lied. 78 of the 108 temporary workers are still working at NuTone. *They are here now.* Read the attached list of names and the dates they started with us! The other 30 people didn't want any permanent work . . . they just wanted extra money for Christmas.

We gave these 108 workers $1,080.00 in Christmas checks—$10.00 to each. We also gave a Christmas check to 32 new people in the Defense Department, who had been with NuTone only 1 to 3 months—making an extra $320.00 for those 32 people. (When these people are with NuTone one year—they are eligible for $50.00—Christmas Bonus.)

Union Lie Number 4

For the second day in a row—they made nasty remarks about the morality of the women in this plant. They call certain foremen "lady killers". As for this scandal about the decent women of our plant—I'll let the men and women of NuTone take care of that LIE. They know what they can do in the *secret ballot* box—on Wednesday, August 19th. They will answer this scandal-talk on that day—with a big *NO*.

1072 Union Lie Number 5

If these CIO Unioneers will tell us the names of the 2 women they claim were laid off—we'll give you the facts about them! There must be a mighty serious reason why anyone—with seniority—would be laid off. The same goes for the man they claim was laid off. It could be this man was someone who falsified his bonus records. Two weeks ago we told you about 3 men who were discharged for dishonesty. But—the silliest and most ridiculous lie of all—was that we laid one man off "because he was making too much money". You men at NuTone who are making good money—and taking home *swell pay checks*—you know that nobody at NuTone ever complained to you about your making good money. When you earn lots of incentive bonus—we're glad to see you have the money—because you deserve it!

As for hiring new women at 85¢ an hour—you know this is not true. This is the second time they told that kind of lie—but they're repeating it—just like Hitler repeated his lies—because he thought *some* people would start believing his lies. Our new women workers make more money than at the RCA (CIO) plant—and we proved that to you in our letter on wages.

What we need at NuTone—is *not* a Union Contract. We need to get rid of Union bosses—Union trouble makers—and Union scandal about our decent women. We know you'll get rid of them—on August 19th—by voting "NO".

NUTONE, INC.

1073 LIST OF EMPLOYEES HIRED SHORTLY BEFORE CHRISTMAS, 1952 AND WHO ARE STILL WITH NUTONE

Name	*Date Hired*	*Name*	*Date Hired*
Adkins, Myrtle	10-14-52	Lewis, Joe	10-13-52
Amos, Everett	11-25-52	Lindsay, Audrey	9- 2-52
Ball, Ronald	10-20-52	Little, William	10-14-52
Bauer, Louanna	9-24-52	Maloney, Dorothy	10-14-52
Becknell, Coy	10- 7-52	Malsbary, Charlotte	9- 4-52
Bowling, Georgia	11-11-52	McCoy, Mary	9- 8-52
Brothers, Virginia	9-30-52	McEvoy, Joseph	12- 1-52
Brown, Mabel	9-19-52	McNamara, William	11-12-52
Butler, Richard	9-22-52	Morgan, Audrey	10-22-52
Calloway, Arcillas	11- 5-52	Morgan, Richard	11-11-52
Carnes, Larry	9-17-52	Munson, Pearl	9-10-52
Casch, Anna	10-28-52	Nugent, Pearl	9-10-52
Childres, Edward	11-18-52	Parks, Alice	11- 6-52
Cox, Louise	11-10-52	Payne, Juanita	9-15-52
Cresap, Geneva	10-13-52	Prentice, Pauline	11-11-52
Donnelly, Shirley	10-25-52	Proffitt, Daisy	10-13-52
Dunlap, Lynn	11- 7-52	Reed, Delia	9- 8-52
Edwards, Clifton	10- 7-52	Reilly, Loretta	10-24-52
Edwards, Hugh	10- 8-52	Reilly, Peter	9-29-52
Embry, Earl	9-29-52	Richards, Ethel	9-15-52
England, Virgil	10-29-52	Ruble, Harry	10- 2-52
Fink, Frances	10- 1-52	Rubia, Andrew	10-27-52
Frost, Cora	11- 5-52	Sanker, Margaret	10- 1-52
Gardner, Clara	11-11-52	Schulte, Zelma	10- 3-52
Glenn, Leonard	10- 6-52	Scoles, James	9-15-52
Grubb, Bessie	10- 2-52	Shannon, Theodore	9-12-52
Gumbert, John Jr.	9-19-52	Shawver, Mae	11-21-52
Guthier, Ralph	11-24-52	Simpson, Lillie	11- 5-52
Henry, Viola	11-11-52	Smith, John Jr.	9-10-52
Hensley, Minnie	9-17-52	Smith, John	11- 7-52
Howell, Florine	9-23-52	Spaeth, Charles	11-24-52
Hubbs, Milford	9-29-52	Spiess, Edith	11-11-52
Jordon, Soll	11- 3-52	Tipton, Chester	10- 6-52
Kidd, Geneva	11- 3-52	VanVuren, Richard	9-26-52
King, Cleo	10-15-52	Voight, Nellie	11- 3-52
King, Jessie	9-23-52	Voigtlander, Helen	11- 4-52
Kurkpatrick, Mary	11-28-52	Wells, Joyce	11- 5-52
Lane, Eva	11- 4-52	Wells, Jesse	10-23-52
Leighton, Dallas	10-17-52	Westerfeld, Harold	10- 6-52

* * * * *

Sunday, August 9, 1953

Dear NuTone Friends:

Once again I am writing you from my home. My letter may be long—I hope you have the patience to read it.

So many of you fine people wrote me an answer to my August 2nd letter—after the Union people attacked me twice. Your letters gave me courage and strength to continue this fight which was started by strangers. I thank you from the bottom of my heart for your wonderful letters.

Many of you told me you were praying for a Victory—because you thought our cause was right. Some of you have asked me to pray. I am not ashamed to tell you that ever since this trouble started, I have been on my knees each night—praying for spiritual help and strength. I suppose—these Union people will attack me again—saying I am using religious prayer to help guide me.

There is one thing that hurts me deeply. Everyone knows that I have always listened to complaints from anyone—and settled them at once. The door of my office is open to any NuTone employee. I have never pushed anyone around—like these Union people claim. Our foremen and plant managers know that my office is always open to any employee who has a complaint—and no foreman or manager has the power to stop a NuTone employee from coming to me—if they think they haven't been treated right. Maybe a Personnel Manager, who used to be with NuTone in 1952, didn't treat some of you right. But—you know he isn't here now. Henry Mann and his associates were picked by me—they will always be fair with you—but don't blame them for someone else's past mistakes. And, if any foreman didn't treat someone right—why didn't that person come to me—instead of going to outsiders—who will never treat them as fairly and honestly as I will. *We can have our own Grievance Committees, if you want to—and settle our own quarrels without outsiders interfering.* It isn't too late for those NuTone people who went over to the other side—even if they signed a union card. They have a legal and moral right to change

their mind—and vote NO. You have a right to give back their C.I.O. buttons—if you want to.

A few letters I received from our new, young employees touched me deeply. One young man wrote to me "I heard you were a good man. But some people were trying to poison my mind against you. They said you were a rich man's son—and didn't care about your employees. Why don't you tell us new people about yourself—give us some facts to help fight their lies. Why don't you defend yourself?"

1091 I'm going to listen to this young man's advice—but I didn't think I'd have to open up my private life—to defend myself against these C.I.O. Union attackers.

I am not a "rich man's son". I was born in Long Island, New York—of poor parents. I graduated from a New York City public school. I went to public high school for one year—but then my parents needed financial support, so I went to work as a mail clerk for an advertising company. I then attended night High School *after* working hours. I paid my own way and graduated high school—also helped my parents as much as I could.

I wanted to be a lawyer—but couldn't afford the cost. I took an examination and won a free scholarship to a Law School—and again worked after school hours. I'm not ashamed to tell you that even though I didn't have to pay the Law College—I had to borrow money to pay for my law books—and paid $2.00 a week to the Loan Company. There were some weeks I missed my payments. I finally graduated Law School—but then a friend got me interested in Radio. I started to write and produce Radio Shows in New York—and started my own radio company. Then—in 1931—the Manager of W.L.W. heard of me—asked me to come to Cincinnati to be a consultant to W.L.W. I opened my office in the Carew Tower—produced shows like Jimmy Scribner's "Johnson Family"—also "Famous Jury Trials" and "Hymns of All Churches". This Hymn Show started on W.L.W. and lasted 12 years—and spread over to 300 U.S. radio stations. When I produced "Hymns of All Churches"—I met and was helped by hundreds of Ministers, Priests and Rabbi's—of the Protestant, Catholic and Jewish churches.

In 1936—a man interested me in Door Chimes. I invested some money and later he dropped out. I started NuTone with 4 employees—with a rented space on Fourth Street. In those early days—even my wife helped wrap packages and take them down to the Post Office. It took 5 years of losses before we started making profits. Again—I'm not ashamed to tell you—because many people know it—I mortgaged my farm to raise money for NuTone. I also borrowed heavily in my personal life insurance. I still owe the Insurance Company—and am still paying interest on that loan.

Our old factory on Eggleston Avenue was unfit to work in—so a Cincinnati Bank loaned me money to start our new factory. We then went into making fans and heaters—needed more space—more machines—more tools and dies. And the Bank loaned me more money on a 10 year loan. We're now paying back this loan every month—also the interest on the loan.

1092 Although I draw a salary from the Company—NuTone has never paid any dividend. We needed the money for machines. Whenever there were profits—they were put back into more equipment and more buildings.

I think you know I work hard and long hours. Some businessmen have yachts—or motor boats or private æro planes. I don't own such things. I have three children—two of them still going to college. My boy Tom is almost 18—and, like any other boy, will soon be in Uncle Sam's army.

I told you my life story—because the young NuToner who wote me said he wanted the truth from me. I have told you the truth—only because it may help you decide if I'm the kind of man these Union people say I am. And I'm not ashamed to tell you the facts—because my life is an open book.

Before these outsiders started this trouble—nearly 300 NuTone people signed a slip—telling me they were interested in someday buying some shares of NuTone stock. Does this sound like our people distrust me?

This was a peaceful factory—until these Union people came around to spread hate—to make some of our people distrust each other—to spread wild lies—to call at your

homes and threaten you. Maybe some other factories need a union to protect their employees—but the majority of our NuTone people feel we can "live and let live" with each other—without strangers spreading hate, lies, trouble and strikes.

Again, I say I hate nobody,—not even those NuTone people who turned against me. I pray that we can all learn to understand each other and help make this a better world to live in.

Sincerely,

J. RALPH CORBETT
J. Ralph Corbett

1093 **General Counsel's Exhibit 14A**

Notice to all NuTone Employees from a Temporary Factory Committee

All NuTone employees will be interested to know that an announcement will soon be made about each department electing people to an Employee Committee—to meet with the company and discuss problems which will help both the employees and the company. A temporary Committee was formed for the purpose of getting this plan started. The following is a report of what has happened so far.

On September 15, 1953, at 2:00 P.M., your Steering Committee, consisting of John Daum, Arlene Lindley, Juanita Griffith and Whitney Vaught, contracted Henry Mann and requested that the company meet with the Employee-Company Relations Committee and discuss things of mutual interest. Our purpose being to promote better understanding and cooperation between the company and employees.

Mr. Mann promised to convey our request to Mr. Corbett and secure a reply. When contacted, Mr. Corbett agreed to meet our Departmental Committee in his office at 3:30 P.M., Wednesday, September 16th, 1953. On that date, your Temporary Committee met with Mr. Corbett, Mr. Bladh and Mr. Mann, and the following statement was submitted and read by the Committee:

"This Committee was formed for the express purpose of improving the relations between the Company and its employees. We feel the need for some method to be arranged, whereby the employees and Company alike

will sit down with a willingness and sincerity on both sides to seek a fair solution to our mutual problems. At that time everyone may feel free to express his views and cooperate in a manner to make NuTone not only a good place to work,—but the best place to work in Cincinnati.

"This first temporary committee was picked at random throughout the plant and a meeting was called. At the meeting it was decided to seek the cooperation of the Company. If it is agreeable to the Company:

1. We would like some arrangements made for holding free democratic elections in every department, so that the employees may choose their own representatives by majority vote.

2. Some procedure set—up pertaining to meetings with the Company representative and the duly elected chairman and representatives from each department."

The Company agreed with this movement and stated it was a step in the right direction, which would result in better relations between NuTone and NuToners. It was also learned at the time that the Company has a few gripes of its own, which they would like to present to the duly elected committee and secure the cooperation of the employees.

Henry Mann advised that he is available to meet with the temporary Committee at any time after they decide what plans can be made for holding a free election and then the time and place can be arranged so that it will be satisfactory to the Temporary Committee and the Company.

1094 The Members of the Temporary Committee follow:

Chairmen: Juanita Griffith, John Daum, Arlene Lindley and Whitey Vaught.

Committee Members:
Punch Press—Ada King and Edna Clem.
Welding—Helen Sapp and Russell Cox.
Chime C—Ruth Minella.
Chime B—Mary Holden.
Chime D—Mary Jane Tierney, Elva Pence and Eva Hensley.

Paint, Tube, Buffing, and Metal Cleaning—Fay Davidson, Bill Herrick and Harvey Hurd.
Chime A—Lillian Anderson and Erma Flannelly.
Display—Joe Griffith.
Defense—Dollie Clarkson.
Packing & Shipping—Bill Sorrell.
Warehouse & Shear—Dallas Prawl.
Fan—Margaret Ball and Bill Ficker.
Inspection—Earl Bendel.
Night—Oscar Sandlin and Loretta Reiley.

In a few days—we will tell you how each department will elect people to the New Committee which will take the place of this Temporary Committee.

STEERING COMMITTEE
JOHN DAUM
ARLENE LINDLEY
JUANITA GRIFFITH
WHITEY VAUGHT

1114 IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12754

UNITED STEELWORKERS OF AMERICA, CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT
NUTONE, INCORPORATED, INTERVENOR

No. 12812

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NUTONE, INCORPORATED, RESPONDENT
UNITED STEELWORKERS OF AMERICA, CIO, INTERVENOR

On Petition to Review and Modify an Order of the National Labor Relations Board (No. 12754) and on Petition to Enforce the Order (No. 12812)

Mr. Arthur J. Goldberg, with whom *Mr. David E. Feller* was on the brief, for petitioner in No. 12754 and intervenor in No. 12812.

Mr. Arnold Ordman, Attorney, National Labor Relations Board, of the bar of the Supreme Judicial
1115 Court of Massachusetts, *pro hac vice,* by special leave of Court, with whom *Mr. Marcel Mallet-Prevost,* Associate General Counsel, National Labor Relations Board, was on the brief, for respondent in No. 12754 and petitioner in No. 12812. *Miss Fannie M. Boyls* also entered an appearance for respondent in No. 12754 and petitioner in No. 12812.

Mr. Charles A. Atwood for intervenor in No. 12754 and respondent in No. 12812. *Mr. Thomas E. Shroyer* also entered an appearance for intervenor in No. 12754 and respondent in No. 12812.

Before PRETTYMAN, WILBUR K. MILLER, and BASTIAN, Circuit Judges.

Opinion—November 23, 1956

PRETTYMAN, *Circuit Judge:* These two cases come here from the National Labor Relations Board. The United Steelworkers of America began in the spring of 1953 a campaign to organize the employees of Nutone, Incorporated, a manufacturing concern of Cincinnati, Ohio. The campaign was heated but not violent. The ensuing election was lost by the Steelworkers, and shortly thereafter an unaffiliated union was formed in the plant. The Steelworkers filed with the Labor Board charges against Nutone, a complaint was issued, hearing was held, and a trial examiner's report and recommended order were issued. Exceptions were filed, and the Board adopted the examiner's conclusions in part and rejected them on one issue. The Steelworkers petitioned this court for review (No. 12754), and the Board petitioned for an enforcement order (No. 12812).

Upon the prehearing conference held in this court the issues in the two cases were phrased by stipulation made by the parties. We turn first to the *Steelworkers* case. The two issues there concern the denial of reinstatement and back pay to an employee named Virgie Marshall and the enforcement by the employer of a no-distribution rule against the union while it (the employer) distributed anti-union literature.

1116 While the organization campaign was in progress a temporary layoff due to economic conditions occurred. Virgie Marshall was among the employees laid off. She was a pro-union advocate and, according to the record, possessed an unusual talent for vivid oral expression. She directed this talent at fellow workers outside the plant. The examiner said the witnesses attributed to her "vile and obscene statements, as well as cursing and profanity." References to the record indicate that his description was pallid. He recommended against requiring her reinstatement. Recognizing that "in the realities of industrial life, particularly where vital issues are at stake during a strike or an organizing campaign, employees frequently express their sentiments in crude and

vulgar language, not suited either to the pleasantries of the drawing room or to the courtesies of parliamentary disputation", the examiner was nevertheless of opinion there are limits to permissible verbal assault. He thought there are bounds of language beyond which an employee may not go and still retain his or her right to reinstatement. The Board agreed with the examiner. We have no difficulty in agreeing with the examiner and the Board on the point.[1] Perhaps such boundaries are far-flung, but wherever the line is drawn it will fail to encompass as permissible the language used by Virgie Marshall. The Board's power is to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of the Act.[2] The basic policy of the Act is industrial peace. The Board is justified in believing that there is language which, when applied directly and personally to fellow workers, is disruptive of that peace and tends to preclude settlement of disputes.

The second issue is a close and difficult one. The
1117 company, prior to and during the organization campaign, had and enforced rules forbidding employees to engage in solicitation of any kind on company time or to distribute on company property any literature or to post thereon any signs. The company itself, however, regularly posted signs and distributed literature on its property. During the campaign the company enforced uniformly the no-solicitation and no-distribution rules against both groups of contending employees, but it did not deem itself bound by these rules and distributed on its property eight pieces of anti-union but non-coercive literature.

The issue before us, as stipulated by the parties, is: Whether an employer commits an unfair labor practice if, during a pre-election period, it enforces an otherwise valid rule against employee distribution of union literature in the plant, while, during that same period, itself distributing non-coercive anti-union literature within the plant in a context of other unfair labor practices, committed prior to the election period and thereafter.

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[1] See National Labor Rel. Bd. v. Longview Furniture Co., 206 F.2d 274 (4th Cir. 1953).

[2] 61 STAT. 147 (1947), 29 U.S.C.A. § 160(c).

This stipulation of the issue is, we may safely assume, precisely drawn. The issue is not the naked question whether the employer commits an unfair labor practice by distributing his own literature. Neither is it the naked question whether the employer commits an unfair labor practice when he enforces a no-distribution rule against his employees. The issue is whether it is an unfair labor practice for the employer to do both things at the same time, *i.e.*, simultaneously distribute his own literature and prohibit his employees from distributing theirs. Thus the problem is not the application of any single provision of the statute but involves the interplay of several rights, some statutory and some inherent. Section 7 of the Act[3] gives employees the right to organize. Section 8(a)(1)[4] protects that right by making it an unfair labor prac-
1118 tice for an employer to interfere with his employees in their exercise of the right. Section 8(c)[5] provides that the dissemination of views in writing shall not constitute an unfair labor practice, if such expression contains no threat of reprisal or force or promise of benefit. Both employer and employees have rights of free speech. The employer has certain other inherent rights, such as the rights to production, to orderly conduct, and to cleanliness and order on his property. Sometimes these several rights conflict.[6] We have such a problem here.

We first explore the situation presented by general considerations, absent subsection (c) of Section 8 of the Act. Except for the effect of legislation, and particularly Sections 7 and 8(a)(1) of this Act, an employer's power to make rules governing employee organizational activities on company premises would be largely unlimited. Absent legislation he could promulgate and enforce rules prohibiting employees from soliciting in favor of a union or distributing union literature on the premises, solely

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[3] 49 STAT. 452 (1935), as amended, 29 U.S.C.A. § 157.

[4] 49 STAT. 452 (1935), as amended, 29 U.S.C.A. § 158(a).

[5] 61 STAT. 142 (1947), 29 U.S.C.A. § 158(c).

[6] *E.g.*, Republic Aviation Corp. v. Board, 324 U.S. 793, 89 L.Ed. 1372, 65 S.Ct. 982 (1945); Labor Board v. Babcock & Wilcox Co., 351 U.S. 105, 100 L.Ed. ——, 76 S.Ct. 679 (1956).

because he was opposed to employee organization. The perquisites of possession or ownership shielded any anti-union purpose behind the employer's rules, just as liberty of contract shielded anti-union conditions on employment or discharge for union affiliations and activity. Under the statute, however, employees have a right to organize and to engage in activities in aid of organization. That is a broad and strong right, although it is not without limits. It does not take precedence over the right of an employer to conduct his business in a reasonable manner and with reasonable prospects of success. But the property rights of an employer do not, as a general principle, justify restrictions on self-organization not reasonably related to the conduct of the enterprise in which he is engaged. Just as discharge of a union adherent is justified if there is "cause" for the employer's action,[7] so too there must be "cause" for limitation of employee organizational activities.[8] The Supreme Court recently made this clear, saying, with respect to the rights of employees on company premises, "No restriction may be placed on the employees' right to discuss self-organization among themselves, unless the employer can demonstrate that a restriction is necessary to maintain production or discipline."[9]

1119

It is well established that no-solicitation rules are valid as to working time because of the obvious interest in maintaining productive activity, and that they are valid as to non-working time in certain establishments such as

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[7] See 61 STAT. 147 (1947), 29 U.S.C.A. § 160(c).

[8] Even where there is some valid purpose relating to production or discipline, the limitation may have so great an effect on employee rights that some disruption of the employer's usual freedom of action may be deemed necessary. See, *e.g.*, Bonwit Teller, Inc. v. National Labor Relations Bd., 197 F.2d 640 (2d Cir. 1952), *cert. denied*, 345 U.S. 905, 97 L.Ed. 1342, 73 S.Ct. 644 (1953).

[9] Labor Board v. Babcock & Wilcox Co., 351 U.S. 105, 113, 100 L.Ed. ——, 76 S.Ct. 679 (1956). See also National Labor Relations Board v. Seamprufe, Inc., 222 F.2d 858 (10th Cir. 1955), *aff'd*, 351 U.S. 105, 100 L.Ed. ——, 76 S.Ct. 679 (1956); Maryland Drydock Co. v. National Labor Rel. Bd., 183 F.2d 538 (4th Cir. 1950); National Labor Relations Bd. v. American Furnace Co., 158 F.2d 376 (7th Cir. 1946); National Labor Relations Bd. v. American Pearl Button Co., 149 F.2d 258 (8th Cir. 1945).

department stores because of the peculiar circumstances of the business.[10] But, where such circumstances do
1120 not exist and rules restricting solicitation are applied to non-working time, they are generally invalid as to employee activities.[11]

No-distribution rules have had a checkered history. At one time the Board held that in the interests of keeping the plant clean and orderly it was not unreasonable for an employer to prohibit the distribution of literature on plant premises at all times.[12] Later the Board took the position that, absent a particular showing that the rule was necessary to plant discipline, an employer could not validly apply such a rule to employees on non-working time.[13] Finally, in *Monolith Portland Cement Company*,[14] the Board held that a no-distribution rule relating to the plant proper could be applied generally to non-working time, absence special circumstances, discrimination, or a specific purpose to suppress self-organization.

Our attention has not been called to any case under the Wagner Act or its successor in which it has been held that an employer can prohibit either solicitation or distribution of literature by employees[15] simply because the premises are company property.[16] Employees
1121 are lawfully within the plant, and non-working time is their own time. If Section 7 activities are to be

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[10] National Labor Rel. Bd. v. May Department Stores Co., 154 F.2d 533 (8th Cir. 1946), *cert. denied*, 329 U.S. 725, 91 L.Ed. 627, 67 S.Ct. 72 (1946). See also Marshall Field & Co. v. National Labor Relations Bd., 200 F.2d 375 (7th Cir. 1952).

[11] See Republic Aviation Corp. v. Board, 324 U.S. 793, 89 L.Ed. 1372, 65 S.Ct. 982 (1945); National Labor Relations Board v. Clark Bros. Co., 163 F.2d 373 (2d Cir. 1947); National Labor Rel. Board v. Glenn L. Martin-Nebraska Co., 141 F.2d 371 (8th Cir. 1944).

[12] Tabin-Picker & Co., 50 N.L.R.B. 928 (1943).

[13] American Book-Stratford Press, Inc., 80 N.L.R.B. 914 (1948).

[14] 94 N.L.R.B. 1358 (1951).

[15] *Cf.* Labor Board v. Babcock & Wilcox Co., 351 U.S. 105, 100 L.Ed. ——, 76 S.Ct. 679 (1956).

[16] In Midland Steel Products Co. v. National Labor R. Bd., 113 F.2d 800 (6th Cir. 1940), the court held that an employer could prohibit solicitation on company property at all times because of controversies and animosities likely to be aroused among employees.

prohibited, something more than mere ownership and control must be shown.

In the instant case no question is raised concerning the rule barring solicitation on company property. Nor is there any dispute concerning the general validity of a broad no-distribution rule like the one in effect at Nutone. However the justification for a broad no-distribution rule by an employer is the need for keeping the plant clean and orderly or the need to maintain discipline. And so Steelworkers argue that, if the company itself undertakes to distribute literature at approximately the same time that it prohibits employees from doing the same thing, the reason for the no-distribution rule is vitiated. They say that, if a rule must have a reason in fact to support it, a rule demonstrably without a reason is invalid. The argument, premised upon Section 7 of the Act, and ignoring for the moment subsection 8(c), is supported by the authorities, as we have indicated. Employees have no right to use their employer's premises to urge a political cause, to support a charity, or to promote programs alien to the right of self-organization; but they do have a right to engage in Section 7 activities, and that right must be given effect unless there is some valid reason to the contrary relating to production or discipline.

Thus we come to the next phase of the problem. Does the fact that the employer distributes literature on the plant property demonstrate that there is no valid reason (in cleanliness, order, production, discipline, etc.) for prohibiting distribution? If the employer himself distributes literature in the plant, how can he validly assert that the distribution of literature would litter the property, distract attention from production, or instigate argument to the disruption of discipline? When the employer strips himself of the reason for his objection, does he not thereby lose the right to object?

1122 In respect to distribution no one seems to dispute the right of an employer to impose upon his employees any and all restrictions, limitations, conditions, etc., which he imposes upon himself. These may relate to amounts, times, places, nature, and all the terms which may be imposed to protect order, cleanliness, production and

discipline. The question is whether the employer, by distributing under certain conditions or restrictions, thereby negatives the reason for prohibiting distribution under precisely those same conditions and restrictions.

This part of the problem is a matter of realism and common sense. It seems to us unrealistic to say that, if an employer distributes certain amounts of literature at certain places at certain times, he can nevertheless claim that the distribution of the same quantity of literature at the same places and at the same or similar times would be disruptive of order or cleanliness. This is one of the keys to the ultimate conclusion in the problem before us, but it is not susceptible of extended explanation or discussion. We think that, if an employer distributes literature in certain amounts under certain conditions, he cannot be heard to say that such distribution is a detriment to his operation; *i.e.*, such a detriment as will support a restriction upon Section 7 rights of employees. It follows from *Labor Board* v. *Babcock & Wilcox Co.*[17] and cases there cited that, being without a reason for a rule, he is not entitled to a rule of no-distribution.

But it is argued that to hold that an employer may not prohibit employee distribution if he himself distributes is to impose a condition upon the employer's right to distribute. It is said that the holding would be equivalent to holding that an employer cannot distribute unless he permits employee distribution under similar conditions. And that argument brings us
1123 face to face with subsection (c) of Section 8 of the Act. Section 8 relates to unfair labor practices, and subsection (c) is:

> "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit."

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17 *Supra* note 15.

Interpretation of this subsection has given rise to many difficulties,[18] but we need not venture too far into the discussions in those cases. One view is that the subsection is absolute, the argument being that Congress was aware of the problem when it inserted this subsection in the statute in 1947. The *Republic Aviation* case[19] had been decided in 1945, and the Supreme Court had described the case (and its companion case, *National Labor Relations Board* v. *Le Tourneau Company of Georgia*) in the following language: "These cases bring here for review the action of the National Labor Relations Board in working out an adjustment between the undisputed right of self-organization assured to employees under the Wagner Act and the equally undisputed right of employers to maintain discipline in their establishments."[20]

1124 The Senate Report on the proposed subsection[21] specifically referred to the restriction placed by the Board upon the decision in *Thomas* v. *Collins*[22] and said that it believed the Board's decision in *Clark Bros. Co., Inc.*,[23] to be too restrictive. If Congress, with the general problem thus before it, had intended that the dissemination of views be subject to other limitations, it would have said so. The subsection says flatly that the dissemination of views in written form shall not constitute an unfair labor practice if the expression contains no threat of reprisal or promise of benefit. It contains no other condition or limitation. To say the subsection means that such distribution shall not constitute an unfair labor practice

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[18] Bonwit Teller, Inc., 96 N.L.R.B. 608 (1951), *enforcement denied*, 197 F.2d 640 (2d Cir. 1952), *cert denied*, 345 U.S. 905, 97 L.Ed. 1342, 73 S.Ct. 644 (1953); Livingston Shirt Corporation, 107 N.L.R.B. 400 (1953); National Labor Relations Bd. v. F. W. Woolworth Co., 214 F.2d 78 (6th Cir. 1954). And see Note, *Limitations upon an Employer's Right of Noncoercive Free Speech*, 38 VA. L. REV. 1037 (1952); Note, *The Coercive Character of Employer Speech: Context and Setting*, 43 GEO. L. J. 405 (1955).

[19] Republic Aviation Corp. v. Board, 324 U.S. 793, 89 L.Ed. 1372, 65 S.Ct. 982 (1945).

[20] 324 U.S. at 797-798.

[21] S. REP. No. 105, 80th Cong., 1st Sess. 23-24 (1947).

[22] 323 U.S. 516, 89 L.Ed. 430, 65 S.Ct. 315 (1945).

[23] 70 N.L.R.B. 802 (1946), *enforcement granted*, 163 F.2d 373 (2d Cir. 1947).

when, as, and if it is coupled with permission to employees to distribute would be to write into the statute a condition not there. The foregoing is the course of one side of the debate.

The other view is that the subsection undoubtedly wipes out the taint of discrimination which might attach to a speech by an employer favoring one union as against another, or against any and all unions, and which might thus be illegal as unfair.[24] It wipes out the obligation of an employer to afford affirmatively to his employees equal opportunity with himself to distribute or to solicit. But it does not wipe out the basic rule that in order to enforce a no-distribution rule against employees the employer must have a valid reason.

The former of the foregoing views is the one taken by the Court of Appeals for the Sixth Circuit in the
1125 *Woolworth* case[25] and by Judge Swan dissenting in *Bonwit Teller*.[26] With the utmost deference to those authorities we find ourselves in disagreement with them. We think the latter of the two views above described is correct.

We suppose everyone would agree that the question is a close and elusive one. Indeed the answer might almost seem to depend upon the way in which the question is put. If we ask, "May an employer distribute noncoercive literature on plant property if he does not also permit employees to do the same thing?", the answer might seem to be, under subsection (c), "Yes." But that is not the question here. The question is: May an employer prohibit employees from distributing literature on plant property if he has by his own action demonstrated the absence of a valid reason for such a prohibition? And the answer to that question must be: He may not.

We think the conclusion we reach does not write an improper restriction upon a statutory provision not so re-

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[24] See, *e.g.*, National Labor Relations Bd. v. American Furnace Co., 158 F.2d 376 (7th Cir. 1946).

[25] National Labor Relations Bd. v. F. W. Woolworth Co., 214 F.2d 78 (6th Cir. 1954).

[26] *Supra* note 8, 197 F.2d at 646.

stricted in terms. Section 8 of the Act flatly prohibits an employer from interfering with the organizational activities of his employees. But the Board and the courts have held that he may interfere with those activities for reasons which he finds in the needs of production, order, cleanliness or discipline. That permission to him is not in the statute in terms. It was a recognition by the enforcing authorities of inherent rights on the part of the employer. It takes no amendment to the statute to say that, when this permission, engrafted upon the statute, is not applicable to a given employer, the unrestricted prohibition of the statute against interference with employee activities comes into play. The statute itself is not thereby amended; it thereby comes into literal effect.

1126 We are fully aware of the restrictions upon judicial review of Board findings and orders, but the present case concerns statutory interpretation and clearly falls within the competence of the court to rule upon the questions presented.

We conclude that the employer here, Nutone, Incorporated, was guilty of an unfair labor practice when it prohibited its employees from distributing organizational literature on company property during non-working hours. The Board's conclusion to the contrary must be set aside and the case remanded with directions to modify paragraph (c) of the order so as to require Nutone to cease and desist from enforcing its no-solicitation and no-distribution rules in a manner inconsistent with this opinion.

This brings us to the case brought here by the Board for enforcement of its order and Nutone's answer to the Board's petition. The questions, as stipulated, concern the sufficiency of the evidence to support three findings by the Board: (1) that Nutone violated Section 8(a)(1) by certain actions t ward employees in respect to union activities; (2) that Nutone's failure to recall certain employees after an economic layoff was because of union activity; and (3) that a certain employee (Puckett) did not so conduct herself as to render her unsuitable for reinstatement. We have examined the evidence from which the Board derived these findings and think it is substan-

tial. The portions of the Board's order based upon these findings will be affirmed.

Upon the foregoing bases the order of the Board must be modified as indicated in this opinion and, as so modified, will be enforced.

1127 IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

October Term, 1956

No. 12,754

UNITED STEELWORKERS OF AMERICA, CIO, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent,*

NUTONE, INCORPORATED, *Intervenor*

No. 12812

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

v.

NUTONE, INCORPORATED, *Respondent,*

UNITED STEELWORKERS OF AMERICA, CIO, *Intervenor.*

On Petition to Review and Modify an Order of the National Labor Relations Board (No. 12,754) and on Petition to Enforce the Order (No. 12,812).

Before: Prettyman, Wilbur K. Miller and Bastian, Circuit Judges.

Order and Decree—November 23, 1956

These cases came on to be heard on the record from the National Labor Relations Board, and were argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and decreed by this Court:

(1) that these cases be, and they are hereby, remanded to the National Labor Relations Board with directions to modify paragraph (c) of the order involved herein in conformity with the opinion of this Court;

(2) that for the foregoing purpose the Clerk be, and he is hereby, directed to issue forthwith to the National Labor Relations Board a certified copy of this order and decree;

(3) that the order of the National Labor Relations Board, as so modified, be enforced;

(4) that within ten days herefrom the Board shall file a supplemental record containing its order modifying paragraph (c) of its order herein in conformity with the opinion of this Court, and shall also submit, in accordance with Rule 38(1) of this Court, a proposed enforcement decree.

Dated: November 23, 1956.

Per Circuit Judge Prettyman.

1129 IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,754

UNITED STEELWORKERS OF AMERICA, CIO, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent,*

and

NUTONE, INCORPORATED, *Intervenor*

No. 12812

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

v.

NUTONE, INCORPORATED, *Respondent,*

and

UNITED STEELWORKERS OF AMERICA, CIO, *Intervenor.*

Decree Enforcing, as Modified, an Order of the National Labor Relations Board—January 16, 1957

Before: Prettyman, Wilbur K. Miller and Bastian, Circuit Judges.

This cause came on to be heard upon the petition of United Steelworkers of America, CIO (No. 12,754) to re-

view an order of the National Labor Relations Board issued against NuTone, Incorporated on June 13, 1955, and upon the petition of the National Labor Relations Board (No. 12,812) to enforce the said order. This Court on March 2, 1956 and September 10, 1956 respectively heard argument and reargument of respective counsel, and has considered the briefs and transcript of record filed in this cause. On November 23, 1956, the Court, being fully advised in the premises, handed down its decision, enforcing the Board's order of June 13, 1955 as modified. In conformity therewith, it is hereby

1130 ORDERED, ADJUDGED AND DECREED that the Respondent in No. 12,812, NuTone, Incorporated, Cincinnati, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in the United Steelworkers of America, CIO, or in any other labor organization of its employees, by failing to recall them after layoff, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

(b) Assisting, contributing support to, or in any other manner interfering with the formation and administration of NuTone Employee-Company Relations Committee, or any other labor organization of its employees, or recognizing said Committee or any successor thereto as the representative of any of its employees for the purpose of dealing with them concerning grievances, labor disputes, wages, hours of work, or other conditions of employment unless and until said organization shall have been certified as such representative by the National Labor Relations Board, or shall have been freely chosen as such by a majority of the employees after all effects of unfair labor practices have been eliminated;

(c) Interrogating its employees concerning their Union membership and activities, soliciting them to report on such activities, or informing them that a layoff was due to such activities;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist United Steelworkers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the National Labor Relations Act, as amended (Hereinafter called the Act).

1131 2. Take the following affirmative action which the National Labor Relations Board has found will effectuate the policies of the Act:

(a) Offer to Charlottie Puckett and Della Puckett immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them whole in accordance with the Board's usual remedial policies (*Chase National Bank,* 65 NLRB 827; *Crossett Lumber Co.,* 8 NLRB 440; *F. W. Woolworth,* 90 NLRB 289) for any loss of pay they may have suffered since June 23, 1953, by reason of the discrimination against them;

(b) Make whole Virgie Marshall, in the manner prescribed in paragraph (a), supra, for any loss of pay she may have suffered from June 23, 1953 to August 18, 1953, inclusive, by reason of the discrimination against her;

(c) Withdraw all recognition from NuTone Employee-Company Relations Committee as the representative of any of its employees for the purpose of dealing with them concerning grievances, labor disputes, wages, hours of work, or other conditions of employment unless and until said organization shall have been certified as such representative by the National Labor Relations Board, or shall have been freely chosen as such by a majority of the employees after all effects of unfair labor practices have been eliminated;

(d) Post in its plant at Cincinnati, Ohio, copies of the notice attached hereto marked Appendix A. Copies of said notice to be furnished by the Regional Director for the Ninth Region of the National Labor Relations Board, Cincinnati, Ohio, shall, after being signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material; and

(e) Notify the aforesaid Regional Director, in writing, within ten (10) days from the date of this Decree, what steps Respondent has taken to comply herewith.

1132 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that within ten days herefrom, subject to any stay granted by this Court, the National Labor Relations Board shall file a supplemental record containing its order modifying paragraph 1 (c) above in conformity with the opinion of this Court, said modification, if found appropriate by this Court, to be incorporated in this Decree and made a part thereof.

Dated: January 16, 1957

s/ E. BARRETT PRETTYMAN
Judge, United States Court of Appeals for the District of Columbia Circuit

s/ WILBUR K. MILLER
Judge, United States Court of Appeals for the District of Columbia Circuit

s/ WALTER M. BASTIAN
Judge, United States Court of Appeals for the District of Columbia Circuit

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A Decree of the United States Court of Appeals, enforcing, as modified, an order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discourage membership in the UNITED STEELWORKERS OF AMERICA, CIO, or in any other labor organization of our employees, by failing or refusing to recall them after layoff, or in any other manner discriminate in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT assist, contribute support to, or in any other manner interfere with the formation and administration of NUTONE EMPLOYEE-COMPANY RELATIONS COMMITTEE, or of any other labor organization of our employees, and we will not recognize said Committee as the representative of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, hours of employment, or other conditions of employment.

WE WILL NOT interrogate our employees concerning their union membership and activities, solicit them to report on such activities, or inform them that a layoff was due to such activities.

WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist UNITED STEELWORKERS OF AMERICA, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8(a) (3) of the Act.

WE WILL offer to Charlottie Puckett and Della Puckett immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of our discrimination against them.

WE WILL make whole Virgie Marshall for any loss of pay she may have suffered from June 23 to August 18, 1953, inclusive, by reason of our discrimination against her.

WE WILL withdraw and withhold all recognition from NUTONE EMPLOYEE-COMPANY RELATIONS COMMITTEE as the representative of any of our employees for the purpose of dealing with them concerning grievances, labor disputes, wages, hours of work, or other conditions of employment, unless and until said organization shall have been certified as such representative by the National Labor Relations Board.

NUTONE, INCORPORATED
(Employer)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

1138 Clerk's Certificate to foregoing transcript omitted in printing.

1139 SUPREME COURT OF THE UNITED STATES

October Term, 1956

No. 785

(Title Omitted)

Order Allowing Certiorari—April 1, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, and case transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE 1957—435302/P.O. 180